

Achieving the Right Balance

A Review of Saskatchewan's Conflict of Interest Policy
Respecting the Provincial Public Service Sector



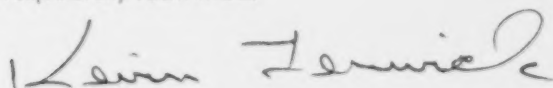
October 2012

The Honourable Dan D'Autremont
Speaker of the Legislative Assembly
Province of Saskatchewan
Legislative Building
2405 Legislative Drive
Regina, Saskatchewan

Dear Mr. Speaker:

It is my honour and privilege to submit a report titled *Achieving the Right Balance: A Review of Saskatchewan's Conflict of Interest Policy Respecting the Provincial Public Service Sector*. It was commenced at the request of the Minister Responsible for the Public Service Commission, conducted on my own motion and is submitted pursuant to section 38(3) of *The Ombudsman Act, 2012*.

Respectfully submitted,



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Executive Summary

The Issue—Saskatchewan's Conflict of Interest Policy for the Public Service

The term conflict of interest is a relatively new term broadly used today to describe a concept that is as old as our collective experience.¹ As a concept it has been recorded in folk wisdom in such expressions as "divided loyalties," "no man may serve two masters," "he who pays the piper calls the tune," and so on. At one time or another we have all experienced conflict of interest situations where we have to make an ethical choice between one obligation and another. Should I do this? "Or should I do that?"² In conflict of interest situations we often rely on two other social concepts to find resolution—integrity and trust. You trust you will act with integrity and make the right choice and you trust others to do the same.

Our expectations of government and those who work for government are no different than what we expect of ourselves or our neighbours when dealing with conflict of interest (COI) situations.³ We expect and trust that government and its officials will act with integrity and make the right decision. Public confidence in government is rooted in trust and the ability of government to prevent and effectively deal with COI is essential to good governance. When COI situations are not effectively dealt with it can erode public confidence in government and in its public service.

When the general public thinks about COI situations in government, they often equate them with corruption. COI in the public service is not about corruption; though if a COI is not properly managed it can, in its most extreme form, result in corruption. "In reality, conflict of interest is properly understood as a situation, not an action, and it is clear that a public official may find him or herself in a conflict of interest situation without actually behaving corruptly."⁴ A COI is about a situation and how the individual public servant and government deal with the situation.

As a concept COI in the public service seems rather straightforward; public servants should avoid any conflicts and government, as an employer, should ensure that conflicts do not occur and if they do deal with the conflicts swiftly and decisively. As a concept COI is indeed straightforward, but its practical application (found typically in the form of policies, rules or codes of conduct) is much more complex for twenty-first century governments and their public service sectors.

The Province of Saskatchewan has a conflict of interest policy for its public service sector. All public servants employed by the provincial government and appointed under *The Public Service Act, 1998*⁵ (PSA) are covered by a single conflict of interest policy known as PS 801 Conflict of Interest.⁶

On April 18, 2012 Ombudsman Saskatchewan was asked by the Minister responsible for the Public Service Commission (PSC) to review the fairness of PS 801. While our review of PS 801 was in response to the Minister's request, it was also in response to a specific complaint. On April 23, 2012 a provincial public servant had complained to our office that a decision made under PS 801 was unfair to him. Prior to coming to us, this individual had also been in contact with the Minister's Office.

Scope and Purpose of the Review

Ombudsman Saskatchewan had two requests for service—an individual complaint and a request to complete an overall review of PS 801.

The individual complaint was about a situation that was thought to be a potential conflict as well as the process used to make decisions respecting and ultimately managing the perceived conflict. The complaint was not about an improper act or omission on the part of the public servant, but rather was about an individual, who was employed as a public servant, and his right as a private citizen to run in a municipal by-election. We have since completed the individual case review and have provided the results of that review to government.

How governments have dealt with COI in the public sector historically has been through the implementation of COI policies—in this case PS 801. The purpose of this systemic review was to look at PS 801 and assess its fairness, and ultimately, effectiveness across the public service.

PS 801

PS 801 came into effect on September 1, 1986 and was last formally revised February 28, 1994.⁷ It is meant to deal with all types and levels of conflicts and outlines a process to manage potential or real COI situations. PS 801 places the onus on the individual public servant to identify and disclose any potential or real conflict. The policy allows for government, when necessary, to restrict the work-related and personal activities "of the public employee to ensure that a conflict of interest does not appear to exist."⁸

PS 801 is similar to other public service COI policies and includes the "basic elements of the disclosure..., the prohibition of certain relationships, and the management of conflicts that have been identified."⁹ It also includes several common elements found in similar policies, including:

- general definitions of conflict
- specification of who is subject to the policy
- a disclosure process
- enforcement guidelines, including actions to be taken once a conflict is identified
- an appeal process

The policy is administered by the Chair of the PSC and the respective Permanent Heads¹⁰ of provincial government ministries and organizations.

The Best Practice Model

To evaluate the fairness and effectiveness of PS 801, we developed a best practices model relying on several public service COI policies from across Canada and two international examples of best practices models for COI policy development for the public service.

We then compiled what are considered to be the best practice requirements of an effective COI policy and incorporated the Ombudsman's Standards of Fairness into the evaluative model. We looked not only at the content of PS 801, but also the framework required to support the effective application of the policy.

Our best practices model identified what is required in a COI policy and is outlined in Section 4. We also, in Section 3, identified what is required to support the effective implementation and application of

a COI policy in the public sector, including a comprehensive policy framework, a supportive organizational culture, adequate training and support for public servants.

Findings

Our review found that PS 801 is a dated policy that does not reflect the best practice requirements of a fair or effective COI policy in the public service sector. We found that:

- The policy lacks a supportive framework and as a result there appears to be confusion among the senior managers interviewed for this report as to the intention of the policy and its ultimate application. When such confusion exists there is a danger that the policy may not be consistently applied across a ministry and, to a larger degree, across the public service.
- PS 801 does not contemplate or deal with the range of COI situations that may occur in a modern day public service. The policy is a prohibitive policy treating all COI alike and it fails to provide a range of management strategies required to deal with the range of conflict situations that can occur in the public service.
- The policy does not clearly outline what interests (personal and financial) are required to be declared, when they should be declared and does not provide a clear process for disclosure.
- PS 801 only applies to those COI that are discovered during a person's tenure with government and does not cover situations where an individual moves from public to private sectors or post employment COI.
- Roles and responsibilities of the public servant, the line manager, the Permanent Head and the PSC are not clearly defined under PS 801.
- PS 801 is not clear if senior executive managers with broad discretionary decision-making authority, such as Assistant Deputy Ministers or Deputy Ministers, are required to declare interests (both financial and personal) or assets prior to commencement of their duties and then annually throughout their tenure.
- COI situations can occur as a public servant carries out their duties. PS 801 does not outline procedures of how such COI are identified, disclosed, recorded and then managed. Beyond a single provided form it is unclear if any documentation is required under the policy.
- There is no recognition of provincial privacy legislation in PS 801.
- There are no timelines with respect to decision making in PS 801; as a result, decisions as to whether a situation constitutes a COI may not be made in a timely manner.
- The current appeal process is limited and the appeal process as outlined applies to only those decisions related to disciplinary actions taken when the policy is contravened.
- The decision-making responsibility of the PSC Chair or his delegates under PS 801 appears to have been largely divested to Human resource consultants in line ministries with no accompanying authority.
- Human resource (HR) consultants in the line ministries have a dual role as decision-maker under the policy and consultant to the ministry and the individual public servant. This dual role in and of itself may place a consultant in a conflict of interest situation.
- There are no provisions which allow the policy to be reviewed annually or publicly reported on.
- It is unclear what training is provided to public servants about the policy or what provisions are made to ensure every public servant is aware of their responsibilities under PS 801.

Recommendations

Traditionally there have been two approaches taken in Canada to COI in the public sector. One is to promote integrity or principles-based approach and the other to enforce compliance or a rules-based approach. "Whereas the latter involves a series of laws—thou shall not's—within which the public sector may operate, the former is based on the more positive assumption that public servants want to act in an ethical and honest based approach."¹¹ The Ombudsman is of the opinion that the majority of Saskatchewan's public servants do act in an ethical and honest manner while carrying out their duties. However, as we found in this review, PS 801 is a rules-based approach that may have met the needs of government years ago, but is limited in dealing with COI in today's public service. Given the limitations found in PS 801, it is timely for the government to examine its COI policy and develop a principles-based approach, based on current best practices, to dealing with COI in the provincial public sector.

Changing a 30-year-old approach to dealing with and managing COI is not as simple as writing new policy. Much work is needed to create the framework and ultimately the organizational culture needed to support and implement a COI approach that is based not only on best practices but encourages and emulates the principles needed to support transparency and accountability in the public service. Ombudsman Saskatchewan recognizes that this will take time. To this end we have made 15 recommendations. Five are for immediate implementation directed toward improving PS 801. We have also made ten recommendations that call for the eventual replacement of PS 801 and the development of a principles-based approach to dealing with COI in the provincial public service. The recommendations follow.

For Immediate Implementation

- To ensure that PS 801 can stand as an interim policy, the PSC should update PS 801 so that it includes references to ministries and other updated references.
- The Chair communicate to all public servants the roles and responsibilities under PS 801 of the position of the Chair, the Chair's designates, Permanent Heads and public servants.
- The Chair communicate to all public servants the need to make sure that all processes under PS 801 respect the requirements of *The Freedom of Information and Protection of Privacy Act*, *The Health Information Protection Act* and the *Overarching Personal Information Framework for Executive Government*.
- The PSC institute a 30-day response period to applications for outside employment under PS 801. If further time is required in which to provide a response, the applicant should be notified of this necessity and be provided with a new anticipated response date.
- The Chair establishes a process for the hearing of appeals of decisions made by designates under the policy.
- The PSC begin the ongoing monitoring of outcomes under PS 801 and random auditing of decisions made under the policy.

Long-Term Recommendations for Completion Within 12 Months

- The PSC create a new COI policy for the Saskatchewan public service to replace PS 801. The new COI policy should be based on current best practice approaches to dealing with COI.
- The PSC develop and implement a comprehensive COI framework that will support the new COI policy and provide the basis for organizational structures that support the effective identification and management of COI.
- The PSC develop materials and resources to support the implementation, interpretation and application of a new COI policy for the Saskatchewan public service.
- The PSC develop and deliver training for the public service on the development, implementation, interpretation and application of a new COI policy.

- The PSC ensure that tracking and auditing processes aimed at ensuring fair and consistent outcomes are built into the new COI policy and framework.
- A new COI policy must include a statement of the general philosophies underlying the policy.
- A new COI policy must include adequate definitions that are clear and concise, and are written in plain language.
- A new COI policy must include a robust appeal process for those public servants who disagree with decisions made under the policy.
- A new COI policy must include processes that ensure the authority of the Chair is delegated in such a way so that decision-makers are not placed in a position that could lead to the perception of bias. This may mean that in situations in which HR consultants are providing advice and consultation on a request, the final decision-making authority should be shifted outside the ministry and the PSC team involved.

Section 1: The Issue, Purpose and Methodology of the Review

1.0 The Issue

"Confidence in government is rooted in trust ... and in turn ... that trust is fostered in a government when it meets the public expectations for fair and effective public service through ethical and transparent activities."¹² Public trust in government not only extends to our political institutions, but should also be found in the administration of government through our public service sectors. An effective public service relies on the public's trust.

Over the last few decades in Canada, as in other developed countries, trust in government and government institutions has been declining.¹³ Lower levels of public trust are not due to one single factor, but a culmination of multiple complex factors, all of which present significant challenges to government. Of particular significance among these challenges is the issue of conflict of interest. "Conflicts of interest in the public sector are particularly important because, if they are not recognized and [managed] appropriately, they can undermine the fundamental integrity of officials, decisions, agencies, and governments."¹⁴

On April 18, 2012 Ombudsman Saskatchewan was asked by the Minister responsible for the Public Service Commission to review the fairness of the provincial government's conflict of interest policy, known internally to government as PS 801.¹⁵ This policy applies to all provincial public servants across Saskatchewan from the individual working as a receptionist to a Deputy Minister.

While our review of PS 801 was in response to the Minister's request, it was also in response to a specific individual complaint. On April 23, 2012 a provincial public servant had complained to our office that a decision made under PS 801 was unfair to him. Prior to coming to us, this individual had also been in contact with the Minister's Office.

On April 26, 2012 the Ombudsman notified the Minister responsible for the PSC of our intention to complete a review of PS 801.

1.1 The Complaint

A public servant employed with the Ministry of Social Services (the "Ministry") was planning to run in a civic by-election in his home community.¹⁶ As required by PS 801, the public servant submitted a request for approval of outside employment so that he could run for office. In the past, the public servant had received approval for similar requests he submitted when employed by another provincial government ministry. The public servant anticipated that he would be given approval for this request.

The Ministry did not recommend approval of the request. The Ministry believed that it would not be possible to deal with the potential public perception of a COI that could arise. The Ministry believed that the specific role of this public servant within the Ministry and the possible influence that could be exercised in either the role of a civic government official or public servant could not be mitigated.

The PSC accepted the Ministry's recommendation to not approve the request. Three months after having submitted his request, the public servant was advised that his request would not be approved; as a result, he did not run in the by-election.

There was no avenue of appeal under the policy for the public servant to appeal the decision to deny his application. Rather than file a grievance through his union, he brought his complaint to our office.

A review of that complaint was undertaken and completed. That case review looked at the application of PS 801 and the outcome of the decisions and actions taken by public servants under the policy.

While our review was taking place, the public servant again submitted a request to the Ministry for approval so that he could run for office in a different civic election. This time the Ministry recommended the request be approved; PSC followed the recommendation of the Ministry and approved the request. This approval corrected the unfairness of the original decision that prompted our initial case review.

1.2 The Purpose of the Review

The practice of Ombudsman Saskatchewan is to always first respond to and conclude an individual complaint before embarking on a systemic review. In this situation we had an individual complaint and a request to complete a fairness review of PS 801. We first completed the individual case review and have since provided the results of that review to government.

The purpose of this systemic review was to look at PS 801 more generally to assess its fairness, and ultimately, effectiveness across the public service.

The Ombudsman recognizes that our role is not to create policy for government. The purpose of this review was rather to review existing policy. However, COI policies are not just about identifying and responding to conflicts. The primary purpose of the COI policy in the public sector is to maintain the public's confidence in the integrity of the public sector and ultimately, government. Our review focused on the policy itself and whether or not it could achieve its primary purpose.

Given the subject matter of this report, the Ombudsman is also mindful of his role as the Public Interest Disclosure Commissioner. The *Public Interest Disclosure Act*¹⁷ (PIDA) was proclaimed September 1, 2011 and the Ombudsman was appointed as the Commissioner on May 3, 2012.¹⁸ "The Public Interest Disclosure Act, Regulations and related policies and procedures are designed to support the integrity of government and the public service and to support [transparency,] accountability and fairness."¹⁹ PIDA is part of the overall legislative scheme to manage COI in the public sector.

1.3 Methodology of the Review

The methods used to carry out the review included:

- A review of Saskatchewan's provincial legislation related to COI in the public sector.
- A cross jurisdictional review of COI public sector policies in seven Canadian provincial and territorial jurisdictions.
- A review of COI public sector policies in the Canadian federal government.
- A comprehensive literature review on COI concepts and an examination of international best practice standards and models for COI in the public sector.
- A review of all PSC policy documents and training materials related to PS 801.
- The creation of a best practices model.
- Interviews of eleven key persons.
- Consultation with the Honourable Ronald L. Barclay, Q.C., Saskatchewan's Conflict of Interest Commissioner.

Section 2: An Overview of Saskatchewan's Conflict of Interest Policy

2.0 Saskatchewan's Public Service Conflict of Interest Policy

All public servants²⁰ employed by the provincial government under the PSA are subject to a COI policy known as PS 801 Conflict of Interest.²¹ This does not include employees of Crown corporations, boards and agencies. PS 801 came into effect on September 1, 1986. It was last formally revised February 28, 1994.²² PS 801 can be found in Appendix A.

The purpose of PS 801 is to "protect the public interest by outlining guidelines for public employees which ensure that a conflict of interest does not or does not appear to exist" either in the performance of their duties or in outside private activities.²³ PS 801 recognizes that the diverse roles and responsibilities within the public service, including advancing the public interest, may lead to situations where it may be necessary to "restrict the activities of the public employee to ensure that a conflict of interest does not appear to exist."²⁴

Upon commencement of employment, public servants will typically sign a prescribed oath of office and a letter of offer. These forms serve the purpose of advising public servants of PS 801 and of their obligation to avoid certain situations that could be seen as COI.

PS 801 applies to all provincial public servants from the individual working as a receptionist to a Deputy Minister.

The policy is meant to deal with all types and levels of conflicts and outlines a process to manage potential or real COI situations. It is administered by the Chair of the PSC and the respective Permanent Heads²⁵ of provincial government ministries and organizations.

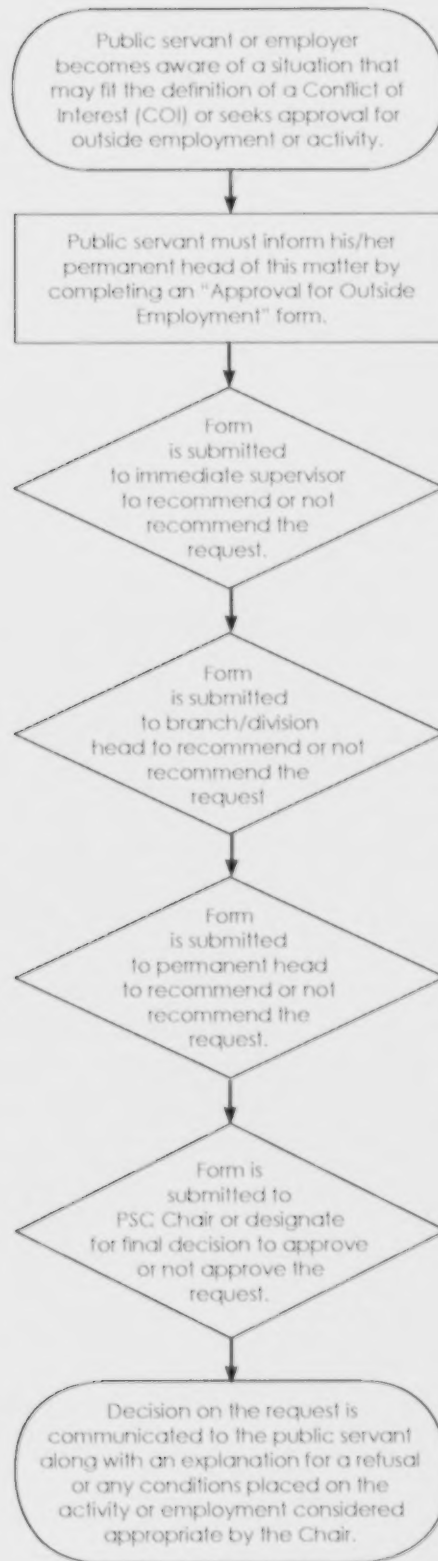
PS 801 is similar to other public service COI policies and includes the "basic elements of the disclosure..., the prohibition of certain relationships, and the management of conflicts that have been identified."²⁶ It also includes several common elements found in similar policies, including:

- general definitions of conflict
- specification of who is subject to the policy
- a disclosure process
- enforcement guidelines, including actions to be taken once a conflict is identified
- an appeal process

PS 801 is a residual and remedial policy in that the majority of the processes established under the policy deal primarily with situations where either the conflict has already occurred or is thought to have occurred. PS 801 does, however, establish procedures to obtain prior approval from the employer when a public servant is seeking outside employment or engaging in activities such as teaching a course at a post-secondary institution or volunteer work.

An overview of PS 801 follows in Figure 1.

Figure 1
PS 801
Process Flowchart



2.1 Definition of Conflict

PS 801 defines a COI as any situation in which a public servant, either for themselves or some other person, attempts to promote a private or personal interest which results or appears to result in either an interference with the objective exercise of their duties in the public service, or an advantage by virtue of their position in the public service.²⁷

The policy provides examples of potential "conflicts" including:

- outside employment including actual employment or the provision of a service or advice from which there is a monetary reward or honorarium
- personal or business relationships
- financial interests (investments and private assets)

2.2 Disclosure of Interests

2.2.1 Disclosure Process

PS 801 requires public servants to disclose potential or actual conflicts. This includes any outside activities or interests inclusive of financial interests. This is all done on one prescribed form called Approval for Outside Employment/Activity and/or Disclosure of Other Outside Activity/Interest which may Create a Real or Perceived Conflict of Interest.

2.2.2 Financial Interests

PS 801 states that when an individual begins their employment in the public service they are "expected to arrange their private and financial affairs in such a manner that no possible conflict of interest exists or appears to exist."²⁸ Private affairs covered by PS 801 include ownership of property or indirect financial dealings, or other ownership such as the ownership of stocks or bonds by an employee's spouse, which might be or appear to be a COI.

The onus is on the public servant to determine if a COI exists, or has the potential to develop as it relates to their financial affairs. If they feel that their private or financial affairs or those of a relative or close associate could result in a COI, they must advise their Permanent Head. The Permanent Head then forwards the matter to the Chair of the PSC who will make a determination if a conflict exists. PS 801 does not provide clarity or a process for disclosure beyond what is described above, nor does it provide criteria that public servants can use in determining whether or not they need to make a disclosure.

PS 801 also establishes a process for when a Permanent Head becomes aware of financial, commercial or business transactions of a public servant which might constitute a COI. In those circumstances the Permanent Head can demand full disclosure of these interests from the public servant in the form of a financial disclosure statement. If a conflict appears to exist, the Permanent Head forwards the matter to the PSC Chair to address.

For those employees who have discretionary authority over financial issues, disclosure of a financial interest can be demanded by their Permanent Head. In this case, if the Permanent Head consults with the PSC Chair, they can then demand that an employee submit a financial disclosure statement.

For both of these circumstances, the guidance offered by the policy is vague and does not provide clarity for those who must decide if and when the policy applies. Furthermore, in both of the above circumstances, the policy does not provide a dedicated form for such statements, nor does it provide an

outline of what is to be included in a statement. If such a form exists elsewhere in PSC policies, public servants are not directed where to find it.

PS 801 outlines a separate process for Permanent Heads and equivalent positions should a conflict arise regarding their financial interest. In these situations the Chair of the PSC can demand a financial disclosure statement from a Permanent Head (or equivalent) "if s/he perceives that the permanent head is involved in a financial, business, or commercial transaction which might constitute a conflict of interest."²⁹ These financial disclosure statements are sent directly to the PSC Chair. The policy outlines that the financial statement of the Permanent Head is confidential and if the concerns are "well founded" by the Minister responsible for the PSC, the issue is "taken to Cabinet for decision."³⁰

2.2.3 Personal Relationships

PS 801 provides direction for public servants whose personal relationships could impact or be seen as impacting the way in which they carry out their duties. The policy directs that those public servants who exercise regulatory, inspection or discretionary control over others must not give or appear to give preferential treatment to family members, friends, current or former business associates, or to any private or public body such as municipal councils, school boards or volunteer organizations of which they might be a member.³¹

PS 801 also establishes that the Chair or the Permanent Head has the discretion to determine if a COI situation exists as a result of the family connections of a public servant.

2.3 Approval for Outside Employment or Activity

2.3.1 Outside Employment or Activity

PS 801 requires public servants to obtain prior approval for outside employment or activities (see Figure 1).

The nature of the employment and activities captured by PS 801 is quite broad and includes paid employment or activity, employment or activity where a service or advice is provided for an honorarium, self-employment, volunteer activity and family ownership of private asset(s) or business interest(s). The policy does not provide an exhaustive list of activities that are or are not allowed; rather it provides a set of guidelines and a process that require the individual to seek prior approval for outside employment or activities. Where the possibility of a COI arises, the public servant must get approval from the PSC Chair before engaging in the outside employment or activity.

2.3.2 The Approval Process

The approval process begins with the public servant submitting an "Approval for Outside Employment" form. On the form the public servant provides an explanation of the employment or activity for which they seek approval and then completes a checklist. The public servant answers yes or no as to whether the employment or activity interferes with the performance of regular duties, uses advantages derived from government employment, involves the use of government resources (such as premises, supplies, equipment, employees, etc.), is performed in a manner as to appear to be an official act or policy of the ministry/government, is done during normal working hours or may create a real or perceived COI.

This form is then submitted to the individual's immediate supervisor for their recommendation. The form goes through two further levels of review at the Branch Head level and then to the Permanent Head or designate for their recommendations. From there the form is sent to the PSC, where the final decision to allow or disallow the outside employment or activity is made by the PSC Chair or designate.

2.4 Appeal Process

PS 801 only allows for appeals related to disciplinary action taken against an employee who has been found to have violated the policy. There are no other appeals established under PS 801.

In-scope employees who disagree with disciplinary action taken against them for violation of PS 801 are directed to access the grievance process available under their collective bargaining agreement. Out-of-scope employees in the same situation are directed by the policy to notify the PSC Chair. The Chair is then responsible to notify the Minister responsible for the PSC of the appeal and to appoint a committee to hear the appeal.

2.5 Administration of the Policy

Permanent Heads (or designates) are responsible to administer PS 801 within their ministries and to ensure that their employees "review and are aware of the Conflict of Interest Guidelines." Though responsible to administer and oversee the policy, much of the authority of the Permanent Head is restricted to making a recommendation to the final decision-maker and arbitrator—the Chair of the PSC.

The PSC Chair is provided significant authority under PS 801. For example, the Chair or designate holds final decision-making authority on all requests for outside employment or activities made under PS 801. Public servants must have the written authorization of the Chair prior to undertaking employment or activity outside the public service. The Chair also has the authority to place limits, conditions and restrictions on outside employment and activities. For instance, if a situation should arise where a public servant has been approved to teach in an educational institution during normal working hours but that activity infringes upon the duties of the public servant, the Chair may require that part or all of the fees received be paid to the Minister of Finance.

The Chair also has the authority to demand financial disclosure statements from employees who have discretionary power in regard to financial issues. Finally, if the Chair determines or becomes aware of a violation of PS 801, they have the authority to institute the following options:

- instruct the public employee to divest himself/herself of his/her financial investments.
- instruct the public employee to transfer his/her financial interests to a blind trust.
- remove the public employee from the responsibilities which are causing the COI.
- accept the public employee's resignation.
- recommend to the Attorney General that the situation be investigated.³²

The Chair also holds some responsibility with respect to appeals under PS 801. Out-of-scope employees who are disciplined for violation of PS 801 can notify the Chair if they wish to appeal the disciplinary action. The Chair is then responsible both to report the appeal to the Minister responsible for the PSC and to appoint a committee to hear the appeal.

COI policies in the public sector play a vital role in protecting the public interest by detecting, avoiding, managing and mitigating COI. However, it is not certain that PS 801 is best suited to fulfill that role.

Section 3: Conflict of Interest Policies in the Public Service Sector

3.0 Purpose of COI Policies

As stated by the Organization for Economic Co-operation and Development (OECD) in its guidelines for *Managing Conflict of Interest in the Public Sector*:

Serving the public interest is the fundamental mission of government and public institutions. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. Governments are increasingly expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making and public management.³³

In order to meet these expectations, various levels of government across Canada have developed COI policies for their respective public sectors.

As a concept, COI in the public sector seems rather straightforward:

- public servants should avoid any conflicts, and
- government, as an employer, should ensure that conflicts do not occur and, if they do, deal with the conflicts swiftly and decisively.

Conceptually, COI is indeed straightforward, but its practical application (found typically in the form of policies, rules or codes of conduct) is much more complex.

Effectively dealing with COI is not only in government's best interests, it is also in the best interest of the public and the public service.

3.1 A Changing Public Sector

The structure of modern government and the environment in which the public service operates are becoming more and more complicated. As a result, the face of today's public sector is rapidly changing. New forms of relationships have developed between the public sector and the private sector (business and not-for-profit) giving rise to increasingly close forms of collaboration such as public/private partnerships, self-regulation, interchanges of personnel, and sponsorships.³⁴ Many government programs are no longer the responsibility of a single government ministry, but are administered by multiple ministries or in partnership with multiple levels of government (i.e. Federal/Provincial partnerships). New forms of employment in the public sector have also emerged with potential for changes to traditional employment obligations and loyalties.³⁵ Public servants are also private citizens and are involved in, and have the right to be involved in, their communities.

In this changing world the intersection between personal interest and public duty is often unclear. Given the complexity of modern government, "conflicts of interest" will present themselves on a regular basis as the work of government is carried out and as such, will always be an issue of concern.³⁶

An effective government relies on the public's trust. When COI arise in government, the public can become skeptical of the integrity of public institutions and can lose trust in government. Over time if COI are not properly managed and addressed, public skepticism can grow and public confidence in the fairness, integrity and effectiveness of government can wane.

For governments, COI in the public sector do not simply involve employee-employer issues. COI involves "public administration, political and legal" issues.³⁷

3.2 What a Conflict of Interest Is and Is Not

["Conflict of interest" first appeared in Random House Dictionary in 1971 and in Black's Law Dictionary in 1979.

Most of us believe we know what a COI is and what it is not. The term COI as it applies to the public sector is a fairly new concept that emerged in the mid-twentieth century.³⁸ Most legislation concerning COI is grounded in the notion that public officials owe "paramount loyalty to the public, and that personal or private financial consideration on the part of government officials should not be allowed to enter the decision-making process."³⁹

Many members of the general public equate COI in the public sector with corruption. COI is not about corruption; though if a COI is not properly managed it can, in its most extreme form, result in corruption. "In reality, conflict of interest is properly understood as a situation, not an action, and it is clear that a public official may find him or herself in a conflict of interest situation without actually behaving corruptly."⁴⁰

A COI is also not about an accusation or about an individual's personal integrity.⁴¹ A COI is about a situation and how the individual public servant and government deal with the situation.

As defined by the OECD in its *Guidelines*, a COI in the public sector is:

a conflict between the public duty and the private interest of a public official,⁴² in which the public official has private-personal capacity interest which could improperly influence their performance of their official duties and responsibilities.⁴³

How governments have dealt with COI in the public sector historically has been through the implementation of COI policies.

3.3 COI Policy Framework

Typically governments seek an organizational solution in dealing with COI through COI policies. But effectively dealing with COI cannot be achieved simply through the introduction of a single prohibitive policy directed at managing all possible COI that may or may not arise across the public service sector. "Modern conflicts of interest systems are no longer based purely on law, compliance and penalising wrongdoing. They are oriented towards preventing COI from happening and encouraging proper behaviour through guidance and orientation measures, such as training."⁴⁴

Effective COI policies in the modern public service need to be supported by a comprehensive policy framework. Generally, policy frameworks set the conceptual foundation or guiding principles that form the basis for overall policy direction and development. The framework should set out the principles that guide government's approach to how COI are managed and ensure this approach is consistent with other related strategies and policies. The actual COI policy is the documented outcome of a much larger COI management strategy and response.

Implementing a COI framework is the first step to creating an organizational culture that effectively manages COI situations. As stated by the Conflict of Interest Commissioner of Ontario:

Having clear and consistent rules is important... however, doing the right thing does not depend only on having appropriate rules and regulations. It also requires an attitude and culture that promotes discussion about possible conflicts that can arise and encourages people to deal with them. Our ultimate objectives should be to raise consciousness so that we all become sensitive enough to recognize potential conflicts and to ensure that we have the necessary policies and procedures to manage them.⁴⁵

3.4 COI-Ready Organizational Culture

Managing COI depends not only on good policies but also on a COI-ready organizational culture.

A COI policy is just a "piece of paper" until it is interpreted and implemented through an organizational culture that is open, transparent and accountable.⁴⁶ A COI-ready organizational culture ensures that COI are properly identified and resolved or managed in an appropriately transparent and timely way without unduly inhibiting the effectiveness and efficiency of the government. Most importantly, organizations that approach COI with openness and transparency will create a climate in which COI are not something to be feared or avoided, but are seen as a natural by-product of a modern public service which can be foreseen, protected against and learned from.⁴⁷

A COI-ready culture first acknowledges that conflicts occur and then establishes systems for managing them in the form of clear policy and procedures. Accountability is ensured through regular audits and further enhanced by publicly reporting the number and nature of COI situations and how they are managed and mitigated.

A COI-ready organization ensures that:

- the policies are widely available, both internally to government and externally to the general public.
- the COI policy is provided to the employee upon hiring and then reviewed annually as part of their performance review.
- training about COI and, in particular, about the COI policy is provided to all employees.
- training not only discusses the entire policy, it also highlights any of the rules that have particular significance to certain employees because of their duties.
- guidance in interpreting and then on-going support in applying the policy is readily available for employees, supervisors and managers.

An organization with a supportive COI-ready culture creates a policy framework that foresees conflicts, handles them and learns from its experiences.⁴⁸ It begins by creating a policy framework that first seeks to balance the private interests of the employee with the public interests of the employer.

3.5 Balancing the Interests of All Stakeholders

When COI policies in the public sector first came into effect they were largely residual policies which attempted to prohibit all private-capacity interests. Such prohibitive policies are not sustainable today because, "public servants have legitimate interests which may arise out of their capacity as private citizens, so conflicts of interest cannot be avoided or prohibited, and must be defined, identified and managed."⁴⁹

Taking a restrictive approach to controlling the private interests of public servants may clash with other rights, or be unworkable or counter-productive in practice. This type of approach may deter some people from seeking employment in the public service altogether and may cause others to choose to leave the public service.

On the other hand, a permissive approach to COI can be counterproductive for government and can lead to situations in which the authority of government can be misused. This can lead to distrust and a lack of public confidence in government.

A modern COI policy framework should seek to strike a balance, by identifying risks to the integrity of public organizations and public servants, prohibiting unacceptable forms of conflict, managing conflict situations appropriately, raising awareness of and educating about such conflicts, and by ensuring effective procedures are in place to identify, disclose, manage and appropriately resolve COI.⁵⁰

Public servants also have rights that would be inappropriate for government to entirely limit. For example, all citizens, including those who work in the public service, have rights under the Canadian Constitution, particularly under the *Canadian Charter of Rights and Freedoms*.⁵¹ These include:

- freedom of conscience and religion
- freedom of thought, belief, opinion and expression
- freedom of association
- the right to vote in elections and be qualified for membership in elected government
- the right to be equal before and under the law

The *Charter of Rights and Freedoms* by its nature requires that for government to restrict any rights, that restriction must both be necessary and use a balanced approach.⁵² As a consequence, it is important that any framework governing COI situations balance the rights that citizens have with the need to ensure that public servants are not acting in a public capacity to further their private interests.

3.6 Principles of Fairness and Privacy

The overall intention of a COI framework and policy is to foster public trust in government institutions by effectively identifying and managing COI so that a balance is struck between the personal interests of the public servant and the public duties and goals of the government organization.⁵³

When balancing the interests of government and of the public servant, the principles of administrative fairness and privacy must be built into a COI framework and policy. Building in these principles represents a proactive approach to ensuring fair practices and protecting the privacy of individuals. This is preferable to the reactive approach associated with traditional frameworks that focus on minimum practice standards and offer remedies for breaches of fair practice and privacy after the breaches have occurred and the harm has been done.⁵⁴

Ensuring the principles of administrative fairness are reflected in a COI policy is essential in creating an open and transparent environment in which COI are managed. Building fairness in at the front end

ensures that processes are in place to be followed before, during and after decisions are made so that those decisions demonstrate value and respect for the positions of all parties. Ensuring fairness up front will ultimately lead to decisions being reached that are procedurally fair and are seen as fair by the parties involved.

Similarly, the policy and its supporting framework must also incorporate practices that are sensitive to the privacy protections afforded individuals in the public service by making sure that personal information collected, used and disclosed through this policy is appropriately managed and protected. Building privacy into the framework and policy from the outset "is a proactive approach to privacy protection which seeks to avoid data breaches and their attendant harm."⁵⁵

3.7 Objectives of a COI Policy

The primary objective of an effective COI policy should not be the prohibition of all private interests on the part of public servants. A simple prohibition of any and all conflicts does not recognize that conflicts do and will occur and that while some are of more consequence than others, they need to be managed if the public trust in government is to be maintained. An effective COI policy recognizes that not all COI situations are the same and therefore should not be dealt with in the same manner.

A COI policy should provide a range of options to manage a range of conflicts that may occur across government. How a COI situation is managed will depend on the circumstances of each case. Every COI situation will need to be carefully reviewed and an appropriate strategy for managing the conflict will have to be developed. In some cases one strategy may be the best solution; in other situations a combination of strategies may be necessary.

In their toolkit called *Managing Conflicts in the Public Sector*, the Independent Commission Against Corruption in Queensland Australia cited six potential options for managing the range of COI situations in the public sector that should be included in a COI policy. These include:

- Register:** The public servant proactively registers any private interests that could result in a COI.
- Restrict:** Reasonable restrictions are placed on the public servant's involvement in the COI.
- Recruit:** A neutral third party is brought in to assist in dealing with the COI.
- Remove:** A public servant is temporarily removed from their position while a more permanent solution to the COI is put in place.
- Relinquish:** A public servant makes the choice to give up the private interest instead of making any changes related to their employment.
- Resign:** A public servant resigns their position as the result of a COI.⁵⁶

3.8 Understanding and Defining Interests Involved in COI

3.8.1 What Interests are Conflicted?

In considering COI, the term "personal interests" should be understood broadly. Generally, a person who is seeking permission from their employer to engage in some kind of outside activity is doing so in order to advance some type of personal interest. As such, personal interest should be taken to not only mean employment or activities for which there may be some form of financial compensation, but also activities that might not involve payment. A broad interpretation of the term personal interest is necessary to protect both employee and employer from the fallout of an unmitigated COI.

It is important to identify and draw a distinction between the types of interests that can be advanced in COI situations. The type of interest being advanced can have an impact on the way in which the COI situation is addressed.

In the context of the public service, a COI occurs when a public servant attempts to advance a personal interest that conflicts in some way with the organizational goals of their employer. Generally, there are two types of interests that can be advanced in these situations: pecuniary and non-pecuniary interests.

Pecuniary Interests

Pecuniary interests occur in the public service when a public servant tries to personally gain in some way through their employment. Pecuniary interests may involve actual or potential financial gain or loss, but can also occur when no financial interest is involved and no money actually changes hands. Pecuniary interests may result from the public official or a related party owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving an income from a second job. Pecuniary interests are generally found to exist where a realistic expectation can be formed that a public official or an associate will directly or indirectly stand to gain a benefit or suffer a loss, depending on the outcome of an issue.⁵⁷

Non-pecuniary Interests

The other form of personal interests that can be advanced in COI situations are called non-pecuniary interests. Non-pecuniary interests do not have a financial component but may arise from personal or family relationships or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias judgment or decisions.⁵⁸

3.8.2 Three Types of Conflict

COI should not be equated with a single overt act. A COI can exist without an action or a real conflict. COI can be all about the "perception" of a situation or circumstances that may potentially give rise to a conflict. There are typically three types of conflict:

Actual conflict of interest: involves a direct conflict between a public official's current duties and responsibilities and their existing private interests. In situations where the private interest actually motivates or influences the partial exercise of public duty, the COI can lead to corruption.

Perceived (or apparent) conflict of interest: occurs where it could be perceived by others that a public official's private interests could improperly influence the performance of their public duties – whether or not this is in fact the case.

Potential conflict of interest: arises when a public official has private interests that could interfere with their official duties in the future.⁵⁹

It is important to recognize all forms of COI because of the significant impact they can have on the public's confidence in government.

Actual COI in the public service can have a serious detrimental effect on the public's trust in the effectiveness, integrity and fairness of government and can raise legitimate concerns about corruption. When public servants are involved in situations where perceptions of COI or the potential for COI exist, it can be equally as damaging to the public trust as being in an actual COI. Whatever form a COI takes, the advancement of a private interest at the expense of a public duty is a serious issue for the public service.

3.9 Conflict of Interest Policy – Towards a Best Practices Approach

Ideally, the approach to managing COI in the public sector should be one that seeks to balance the interests of the public, public servants, and government. Utilizing this approach requires proactive processes in which both employers and employees have key roles in assessing activity not only in the approval process, but throughout their tenure in the public service. This is the approach to COI policy favoured by current best practices.

In order to determine if the approach to COI utilized in PS 801 meets current best practices, we have developed a best practices model and tested PS 801 against it.

Section 4: A Best Practices Model for Conflict of Interest Policy

4.0 Best Practices Model

We were asked to look at the fairness of PS 801 in relation to a specific case. That review has been completed and our findings have been provided to government. In reviewing that case we also looked at PS 801 more generally in terms of the fairness of the policy itself.

Typically, Ombudsman reviews are focused on the application of an existing government policy and the substantive outcome of the decisions or actions made by a public servant while implementing that policy. Most often an Ombudsman review is initiated when a citizen believes they have been treated unfairly by a public servant's application of a government policy or because of an absence of a policy. Though our involvement in this issue was originally initiated because an individual public servant believed that a decision made under PS 801 was unfair, this review looks at the fairness of the policy itself at the request of the Minister.

To review the fairness of the policy we developed a best practices model in order to evaluate PS 801. We did so by reviewing several public service COI policies from across Canada. We also looked at two international examples of best practices models for COI policy development for the public service:

- *Managing Conflicts of Interest in the Public Sector: Toolkit* (2004) created by the Independent Commission Against Corruption and the Crime and Misconduct Commission in Queensland Australia.⁶⁰
- *Guidelines on Managing Conflict in the Public Service* (2005) created by the Organization of Economic Cooperation and Development.⁶¹

We then compiled what are considered to be the best practice requirements of an effective COI policy and incorporated the Ombudsman's Standards of Fairness into the evaluative model.

Our review focussed on PS 801 as it currently applies and we made several assumptions about the policy and its application across government. PS 801 was created 26 years ago and was last reviewed 18 years ago. Given the length of time, we did not review the particular policy development process used by government when it first created or last reviewed the policy. We also did not review what was considered to be best practices with respect to content when the policy was first developed or later reviewed. We assumed that the policy development process and the content of PS 801 were reflective of best practices at that time. We also accepted that the policy as written is currently being used across government and did not complete an audit to determine compliance with the policy.

4.0.1 Incorporation of the Standards of Fairness into the Model

The work of Ombudsman Saskatchewan has always had a dual focus in that we look to resolve individual complaints and to improve and promote "good public administration" that is "accountable, lawful, fair, transparent and responsive."⁶² Most often our work is complaint-driven and our reviews are retrospective in that we look at situations where a decision has already been made and the impact has already occurred. These decisions, known as administrative decisions, are typically made pursuant to a program policy. We then assess the fairness of these administrative decisions by evaluating the procedural, substantive and relational fairness of the decision and the impact of the decision on the individual or group of individuals.⁶³

For this report we assessed the policy itself. In other words, we assessed the policy that guides the decision-maker in reaching a decision. We recognized that many decisions will be made under a COI policy. These include decisions about whether someone is in a COI situation, whether the conflict is

actual, perceived or potential, how to manage the conflict, and what penalty should be applied to someone who has breached a COI policy. We did not look at the potential decision, but at whether the content of the policy ensures that the principles of fairness are built into the processes contained in the policy from identification of a conflict to any appeals of decisions made under the policy. We also looked beyond policy content and assessed what was or is needed to support fair decision-making when applying a COI policy in the public sector.

By applying our fairness lens into the evaluation of PS 801 in conjunction with our best practices model, we were able to review not only policy content but the framework required to support the successful application of the policy.

4.1 A COI Supportive Policy Framework

An effective COI policy is an important part of a larger framework that serves to promote good government through processes that encourage and support integrity, accountability and transparency within the public service. Having an effective COI policy in place that has efficient processes for identifying and dealing with COI, appropriate accountability mechanisms, and supportive management approaches is critical for ensuring that public servants take personal responsibility for meeting the greater goal of good government.⁶⁴

As argued in Sections 3.3 and 3.4, a supportive framework and a COI-ready organizational culture are important precursors to an effective COI policy and are therefore, essential components that ought to be considered when developing or amending COI policy.

4.2 Foundational Best Practice Requirements of a COI Policy

A well-written and enforced COI policy ensures that government can identify potential conflicts before they occur, "ensure consistent decision making about similar transactions and safeguard" government "against transactions that may violate" the public trust.⁶⁵ A COI policy should identify and provide guidelines on the most important and common COI situations faced by governments and their employees and set down general principles that can be applied to a situation not covered under the policy.⁶⁶

However, even the most effective policy is just a "piece of paper" if not supported within government and not embedded in the organizational culture of the public service.

4.2.1 Philosophy, Principles and Purpose

In order for a policy to be effective, it is important to clearly identify and articulate the philosophy behind it. Without a clear understanding of its philosophical basis, a policy can be interpreted in different ways.

The philosophical intent of a policy is often outlined in a statement of principles also known as core principles. These are typically written in the form of statements that not only direct how all COI are to be managed, but also how public servants are to carry out their duties. For example, a core principles statement could direct that all public servants "make decisions and provide advice on the basis of the relevant law and policy, and the merits of each case, without regard for personal gain."⁶⁷ Another could outline that all conflicts are to be managed transparently and that the effective management of COI depends on the joint participation of staff, managers and the leadership of the organization itself. The statement of principles should encourage openness, transparency and accountability in managing COI. The philosophy should be tied to the government's larger principles, mission and values.

The starting point for any policy is its statement of purpose. The statement of purpose tells the reader why the policy is there, what objective it intends to achieve and, in a general way, how it is to be used. The basis for establishing how a policy is intended to be used should be reflective of the principles and the philosophy that underlie it.

4.2.2 Definitions

An effective policy provides clear, concise definitions of the terms used in it. In a COI policy this means defining who the policy applies to and the types of COI the policy covers. Definitions should be as clear as possible and written in plain language, avoiding technical jargon or overly legalistic language when possible.

Given that a COI policy for government will apply to a variety of workplaces and circumstances, these definitions will need to be broad enough to capture a wide spectrum of factors that have the potential to impact or influence decision-making.

A definition should be a broad statement that describes what constitutes a COI within Saskatchewan's public service and lists the types of conflicts. It should provide applicable examples of situations that give rise to conflicts and examples of what would not be considered COI. It should be clear and non-technical and capture the full range of the types of COI. The definitions section of the policy, at a minimum, should include:

- a general definition of a COI
- definitions of the types of conflict
 - actual, perceived/apparent, potential
- explanations of the types of interest that give rise to conflict, including:
 - pecuniary
 - non-pecuniary
 - personal
 - private
 - family business
- the inclusion of any terms used in PSC policy or applicable legislation

In the context of the government workplace, it would be very helpful to provide specific examples of COI that may arise. Examples complement definitions and given the complexity of government structure and service delivery and the many forms that COI can take, it is crucial that there is assistance in interpreting the definitions contained in a COI policy intended for the public service.

A list of examples does not need to be exhaustive, and in the context of the public service it cannot be, but it should build on the definitions used in the policy in such a way that the reader is better able to interpret and apply the policy. For instance, examples can be used to demonstrate how a COI may appear in a different form in the Ministry of Social Services than it may appear in the Ministry of Finance.

More focused examples of COI should be provided for those groups that work in at-risk areas, such as the public/private sector interface, government procurement, government contracting and for those who exercise regulatory or inspectorial authority. Special consideration may need to be given to public servants who work in remote areas or serve rural and northern populations as the potential for COI to arise may be elevated in these areas.⁶⁸

The policy should also provide a range of examples of private interests which could result in a COI and may need to be disclosed, such as financial and economic interests, debts and assets, and affiliations with for-profit and not-for-profit organizations.⁶⁹

The examples section should include:

- examples of situations in which conflicts are likely to arise in the course of public service work
- examples of situations and relationships that would not be considered a COI

4.2.3 Application

This section should clearly outline which public servants are covered under the policy, the employment tenure the policy is meant to cover, and any provisions made for special groups. At a minimum, this section should:

- identify to whom the policy applies
- outline when in the individual's tenure the policy applies, for example:
 - pre-employment
 - at commencement of employment
 - during or at the end of a probationary period
 - during tenure of employment
 - post-employment
- note any special provisions recognizing groups of public servants including but not restricted to:
 - non-permanent staff (part-time and contract staff)
 - government appointed boards or commissions
 - executive management (Permanent Heads or designates)
 - Executive Council
 - Legislative Assembly staff
 - staff of independent offices
- note any special provisions recognizing unique work situations or environments, for example, special provisions or guidelines for staff working in rural or remote areas

4.2.4 Relevant Legislation

This section should outline and list any statutory provisions that impose obligations on those covered by the COI policy with respect to the disclosure and management of COI. The details of those obligations should be included in pertinent sections of the policy (e.g. procedures) or reproduced in a separate appendix to the policy.

4.2.5 Related Policies

The successful implementation of the COI policy may impact, be dependent on, or overlap with other PSC policies. This section should outline for those covered under this policy, or those charged with managing under the policy, if there are other related PSC policies that also need to be considered in applying the policy. This section should list all PSC policies that directly relate to and have a bearing on the operation of the COI policy. The other policies should also be included in pertinent sections of the COI policy (e.g. procedures) or in an appendix to the policy.

4.2.6 Roles and Responsibilities

This section of a policy should outline which parties are responsible to carry out specific duties identified in the policy. An effective COI policy will establish procedures to be followed and assign responsibility so that COI can be avoided where possible and appropriately managed when they do occur.

Government and PSC

This section should outline the role of government and, specifically, the role of the PSC in the management of COI. At a minimum, this section should outline that under the policy government and/or the PSC will:

- establish a system for managing COI in the form of clear policy and procedures
- promote an organizational culture that supports transparency and accountability
- commit to fair decision-making under the policy
- establish a mechanism to ensure annual reviews of the COI policy to ensure it remains current and effective
- develop a confidential mechanism to receive and investigate complaints
- develop a mechanism to annually audit compliance with the policy
- publicly report any breaches and resolutions of alleged breaches in a similar fashion as is required under *The Public Interest Disclosure Act*⁷⁰

Public Servant

This section should outline the roles and responsibilities of all public servants captured by the COI policy. Most importantly, this section should provide a clear and concise statement outlining the obligation of all public servants to formally disclose any real or perceived COI.

The content of this section should clearly outline the role and responsibilities of the public servant and should include statements that clearly communicate:

- the obligation to avoid COI, where possible
- the obligation to assess their private and personal interests and whether they conflict or have the potential to conflict with their duties
- the responsibility to manage conflicts that cannot be avoided
- the responsibility to formally declare and disclose any conflicts in accordance with the procedures established by the policy
- the responsibility to comply with any other requirements of the COI policy

Managers

The effectiveness of the policy will to a large extent depend on the role of managers. The policy must make it clear that the manager is responsible to:

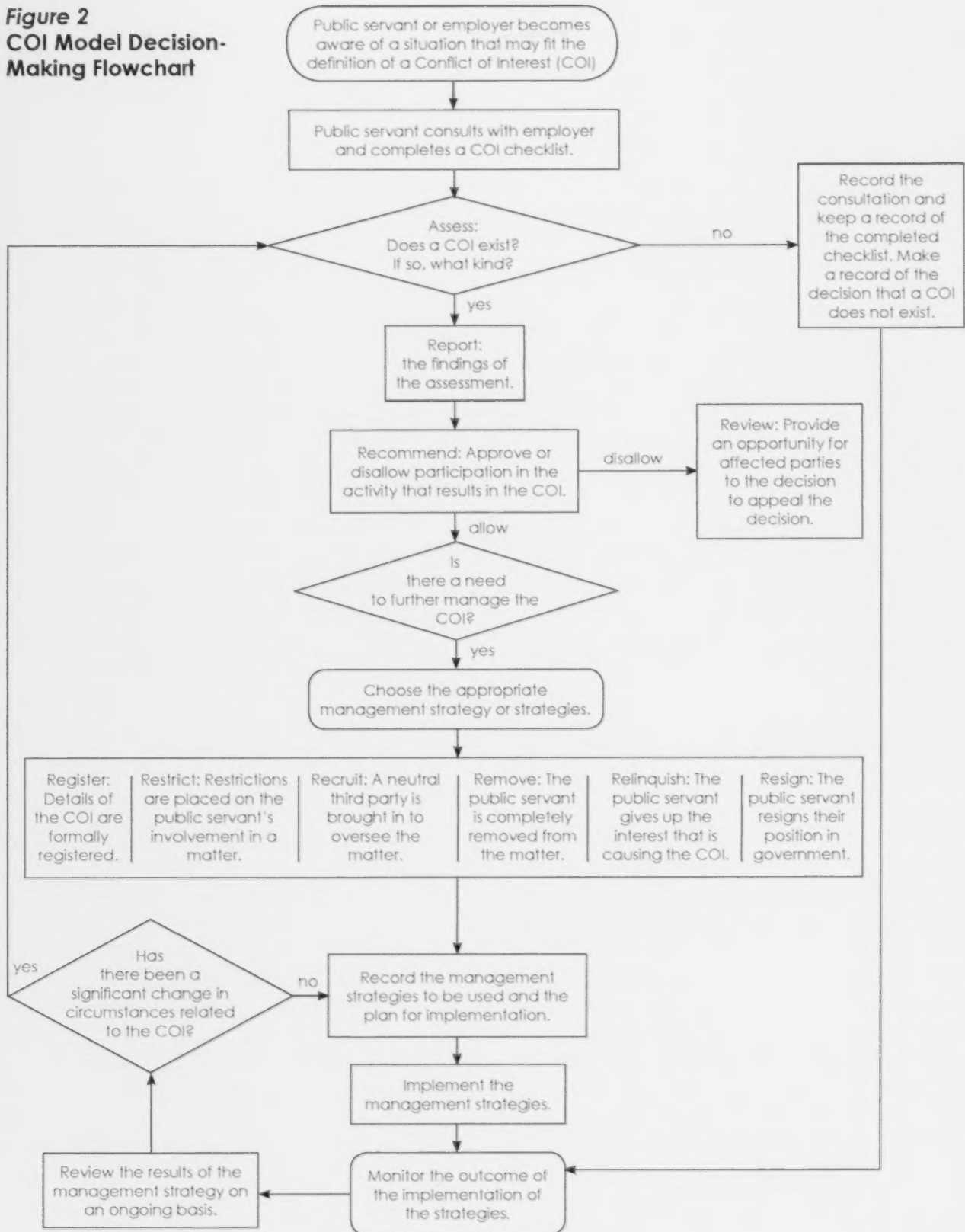
- comply with the policy with respect to their own COI and potential COI
- facilitate compliance of those they supervise by:
 - being aware of the risks of COI inherent in the work of the staff they manage
 - making staff aware of the policy and procedures
 - documenting, as may be required under the policy, any receipts of disclosure reported to them by staff
 - advising staff about the appropriate ways to manage COI situations
 - assisting staff who disclose conflicts in preparing management strategies
 - monitoring the work of staff and the risk they are exposed to
 - complying with any other procedures as is required under the policy

4.3 Procedures

This section should outline the practical steps a public servant should follow in order to avoid COI where possible and to deal with COI when they occur. The procedures section should clearly outline the steps the public servant, the manager and all others involved in the administration of the policy must take. The procedures should also outline any exceptions to the general rules and who has the authority to grant exceptions.

An overview of the best practice process can be seen in Figure 2 on the following page.

Figure 2
COI Model Decision-Making Flowchart



4.3.1 Declaration and Statement of Interests (Financial and Non-financial)

An effective COI policy draws the distinction between asset declaration and declaration of non-financial interests in that "interests do not provide any concrete benefit, assets refer to ownership or direct benefit."⁷¹ The policy should clearly set out procedures for declaring and/or disclosing interests, both personal and financial.

Often COI situations are interest-based situations that are non-financial in nature. Declaration of non-financial interests is made on an as needed and ad hoc basis dependent upon the situation. For example, a public servant may sit on a not-for-profit board and may have done so for many years. Later, that organization applies for funding from the same government ministry the public servant is employed in. The public servant may need to declare this potential COI and put strategies in place to manage the conflict or the perception of a conflict. Procedures for "declaring" interests allow for proactive and preventive conflict management strategies to be employed.

Effective COI policies also address situations where the interests involved are the financial interests or assets of a public servant. If the COI policy is to cover all public servants as described under the PSA, it will also include senior officials or others who may be required to submit a Statement or Declaration of Interest prior to the commencement of their duties or upon request of their employer. A Statement or Declaration of Interest typically involves declaring one's financial interests and assets or those of a family member or close associate.

A Statement or Declaration of Interest is not necessary for every public servant and in fact is not practical. COI policies that require public servants to declare financial interest or assets must strike a balance between government's need for transparency and the individual public servant's right to privacy. There is no need for every public servant to declare or register their financial interest or assets, but there might be a need for a select few to do so. The general rule of thumb is that the higher the office held by the public servant and the greater the decision-making authority, the stronger the argument for transparency.⁷²

If the policy requires a Statement or Declaration of Interest, the procedures should outline when a public servant is required to complete a Statement or Declaration of Interest and under what circumstances the employer can request one. Where the COI policy requires a Statement or Declaration of Interest, the policy should, at a minimum, outline:

- the name of the position responsible for managing the Statement or Declarations of Interest
- a standard Statement or Declaration of Interest form and guidelines explaining which interests should be declared
- if no standard statement is provided, a listing of what information is required in a Statement or Declaration of Interest
- confidentiality provisions regarding the statements

4.3.2 Disclosures

This section outlines the steps an individual public servant is required to follow to disclose a COI. At a minimum, the procedures should include:

- the name of the position the COI must be disclosed to
- timelines for disclosure
- details of the COI
- any prescribed forms used to document the disclosure
- confidentiality provisions in dealing with disclosures

The details of the disclosure and the prescribed form (if any) must ensure that enough information is captured so that:

- it can be determined if a COI exists
- the determination can be made in a timely manner
- if a COI is found, it can be managed or resolved

4.3.3 Managing a Conflict of Interest

COI come in many different forms and managing the range of conflicts is a complex process that requires not only technical skill and knowledge but also "an understanding of the many issues which are usually involved" in COI situations.⁷³ Procedures to manage the range of conflicts a public service may encounter must not only provide technical guidance, but also be flexible enough to recognize the uniqueness of each case and the issues involved.

There are typically two key players in managing COI—the individual public servant and the person charged with the responsibility to assist in managing the conflict. The procedures section should provide guidance to both the disclosing public servant and the individual charged with the responsibility to manage the conflict. As such, procedures should be alternately prescriptive or permissive in order to meet the demands of a given situation.

Procedures should outline the steps to be followed to effectively manage a conflict once it has been disclosed, including how to appropriately manage the conflict. Procedures should not focus on the outcome of the conflict, but on the strategy employed to manage and ultimately resolve the conflict. The section should outline the range of available management strategies, describing when and under what circumstances a particular strategy is preferred or required, and what steps need to be taken to implement a given strategy.

Steps to managing COI should include a range of strategies including Registration, Restricting, Recruiting, Removing, Relinquishing, and Resignation. These terms are all defined and described in Section 3.7.

This section should also outline the steps required to monitor the strategy and steps that need to be taken if the strategy has not produced a satisfactory resolution.

4.3.4 Record Keeping

This section should outline the types of record-keeping and documentation required under the policy. It should include any and all prescribed forms and procedures for how the forms and information will be managed.

4.3.5 Breaches of the Policy

The policy must also explain the consequences for breaches of the policy. This does not have to be an exhaustive list but should outline generally what is considered to be a breach, inclusive of any acts of omission, and the general consequences that may occur.

4.3.6 Privacy

This section should acknowledge that the reporting of potential or actual conflicts or any declaration of interest may involve the disclosure of personal information. The section must note how confidential information will be handled. It must also note the relevant privacy legislation that is to be adhered to.

4.4 Reviews and Appeals

An effective COI policy includes a process that will ensure decisions are reviewed and, if necessary, corrected. This section should outline the process and articulate what decisions can be reviewed and what decisions can be appealed under the policy. The policy should incorporate the rules of procedural fairness and provide an appeal process for any adverse or potentially adverse-in-interest decisions. The processes provided must also ensure that such decisions can be corrected.

4.5 Other Considerations

4.5.1 Accessibility

The most effective policy is one that is read and easily understood by the people it applies to. If a policy is written in a way that is not understandable then it will be of little use. An effective policy will be written in plain language. It should also be written in an accessible and coherent manner, grammatically and structurally.

In addition, the policy must be available. It should be posted on an available website for both public servants and the general public.

4.5.2 Related Key Documents and Personnel

There are a variety of workplaces and circumstances that a COI policy for government will have to cover. Therefore, it is difficult to imagine any policy that could be detailed enough to cover all the possible situations in which it could have application. Rather than try to capture all of the possible situations it could apply to, an effective COI policy will link to other helpful resources; these may be documents, key personnel or training.

Key documents that should be linked to a COI policy include codes of conduct or ethical codes specific to particular organizations. Each ministry or institution may also wish to supplement the policy with specific guidance about the most important and most common COI situations faced by that organization. In this way, the general framework established by the overarching COI policy can be bolstered by individual government organizations and tailored to the organization's specific needs.

Key personnel may include human resources consultants or labour relations consultants. These persons should possess some expertise in the area of COI and can provide valuable advice to public servants who are applying for approval of outside activities and those who will be making decisions about these applications.

4.5.3 Training

Training and awareness-raising are key pieces to the effective application of a government-wide COI policy. Public servants, including supervisors and managers, need to know about the policy, how it applies to them and their responsibilities. Without this knowledge the policy is rendered ineffective. An effective COI policy will include educational materials, supporting documents and training about the policy and its application.

4.5.4 Maintenance of the Policy Over Time

Any effective policy, including a COI policy, should set out time frames for its review and revision. The best policy that can be written today will not remain effective in the long term if it is not reviewed and revised. For a policy to remain effective and relevant, it must keep pace with the organization it is in-

tended to apply to. An effective policy will build in a time frame for review and revision so that it keeps pace with the changes that naturally occur in any organization and the best practices that naturally develop and evolve in any field.

4.6 Special Consideration – Post-Employment Requirements

One COI issue that has developed over the past twenty years is post-employment guidelines. While these may not have been at the forefront of consideration the last time that the Government of Saskatchewan's COI policy was reviewed and updated, these are now a standard and important consideration when implementing COI policy.

Section 5: Analysis of PS 801

5.0 Reviewing PS 801 against the Best Practices Model

[In Saskatchewan there are 11,905 employees government-wide delivering services over a large geographic area.⁷⁴

Carrying out the business of the provincial government involves multi-layered approaches that can involve more than one ministry or government organization and often involves partnerships with non-governmental agencies. In this environment potential COI situations will emerge on a daily basis.

Ombudsman Saskatchewan reviewed PS 801 to determine if it met the best practice requirements of an effective and fair COI policy in the public sector. Our overall conclusion is that PS 801 does not.

PS 801 is an outdated policy that was created in 1986 and last updated in 1994. While it likely met the needs of government at that time, it is limited in doing so now. Its primary purpose is to respond to requests for approval of outside employment or other activities. It does not adequately cover the range of COI that may arise in the current context.

5.1 The Need for a Supportive Framework

We have discussed how effective solutions to COI are achieved not simply through a single prohibitive policy, but are found in the development and implementation of a comprehensive framework of policy, training, and resources. Presently, there does not appear to be an overall framework that supports PS 801. That, in and of itself, is not surprising however, as PS 801 is a dated policy that is likely not reflective of the needs of government today.

Without a supportive framework, the intention of PS 801 can be in doubt among the many to whom the policy applies. Differential interpretation can lead to the inconsistent application of the policy. Our review has found that PS 801 is, in fact, being interpreted differently within government. One senior public servant we interviewed stated that PS 801 reflects a general philosophy that seeks a balance between the employee's interests outside of the workplace and their ability to perform their duties.⁷⁵ This official suggested that the duty to the employer must be recognized and should hold significant weight in the application of the policy.

Another senior public servant suggested that the general approach used in applying PS 801 is permissive and affords public servants wide latitude to engage in activities outside of government employment.⁷⁶ This person suggested that the onus is on the employer to demonstrate why the outside activity should not be approved and that in general, the employer is obligated to modify the nature of the employee's duties to try to accommodate the outside activity when possible.

Yet another senior public servant suggested a restrictive approach to applying PS 801.⁷⁷ For this person, dealing with COI in the public service means setting the bar higher than for those who work outside the public service. This person stated a tendency to err on the side of caution in applying PS 801 bearing in mind the interests of the general public in reaching decisions on COI.

Each of these approaches recognizes important interests that should be considered in addressing COI. The employee's duty to the employer, the employer's obligation to accommodate, and the interest of the public are all factors that should be considered in determining how to address a COI. This divergence of opinions amongst senior public servants on the philosophy of how to handle COI suggests that PS 801 is at risk of being applied inconsistently.

An effective COI framework promotes good government by consistently managing conflicts in the public service with integrity, accountability and transparency. An effective framework is built upon a clearly articulated philosophy that describes the intent of the policy it supports and the manner in which it is to be applied.

The business of government is more complex and our public sector is different than it was 30 years ago. The approaches to COI have changed in the intervening years and the provincial government needs to modernize its approach to managing COI in the public sector. It should begin by developing a policy framework that will support the creation and implementation of an effective COI policy.

5.2 The Content Limitations of PS 801

The content of PS 801 does not reflect best practice requirements of COI policy in the public sector. Section 4 outlined in some detail the content requirements of an effective COI policy in the public sector. For the sake of brevity, this section will only highlight and summarize the significant content areas where PS 801 does not meet best practice standards.

5.2.1 Scope of the Policy

At the time PS 801 was created, it was designed to deal with all conflict situations arising in the public sector. A fundamental flaw of PS 801 is that it does not adequately deal with the range of conflict situations that may arise in the public sector today. As written, the policy appears to be primarily intended to respond to requests for approval of outside employment or other activities and, to a limited degree, financial interests.

An example of an activity, which was the impetus of this report, that may not have been fully contemplated when the policy was first introduced is political activity. PS 801 does not specifically identify political activity, nor is political activity captured by any of the examples used in PS 801.⁷⁸ Though not clearly spelled out, it can be interpreted that political activity is at least partially included under the general definition of outside employment as meaning an activity "from which there is a monetary reward." There are, however, many forms of political activity from which no monetary reward or compensation as an outcome of that activity is considered, sought or obtained.

As stated above, PS 801 also deals with financial interests (investments and assets), but does not contain adequate information with respect to the declaration of such interests to allow for any potential conflict to be properly identified and managed. Financial interests or assets are dealt with under the policy section called "Management of Private Affairs and Investments." This section does not include a standard statement employees can use to identify what information should or is required to be disclosed, or how the information will be collected. There is a section entitled "Criteria for Disclosure" which does not actually list any criteria. This section only contains examples of situations where disclosure would be necessary. This is not helpful to public servants and may lead them to believe that they would only be required to submit a declaration of interests if their situation matched one of the listed examples.

This section of the policy should include detailed, specific information as to when declarations of interest are necessary and the procedures for how these declarations are to be made, including any forms required for the declaration. A separate form should be developed specifically for the declaration of

interests. The current form used in the policy is intended to do too much and as a result, is not sufficient for all the purposes it is used for.

5.2.2 Applicability – Who Does the Policy Apply to and When Does the Policy Apply?

PS 801 applies to all employees appointed under *The Public Service Act, 1998*.⁷⁹ An effective COI policy should cover all public servants. An effective COI policy should also address the employment period the policy is meant to cover and mention any provisions made for certain groups of public servants.

PS 801 is limited in that it appears to apply only to those conflict situations that may arise during the tenure of a public servant's active employment in the public sector. PS 801 does not cover conflicts that could emerge when personnel move between the public sector and the private or not-for-profit sectors. This type of conflict is known as post-public employment conflict and occurs when the individual "uses information or contacts acquired while in government to benefit themselves, or others" before or after they leave government.⁸⁰ PS 801 likely does not address post-public employment conflicts because at the time it was developed, movement or exchange of personnel between the sectors was much more limited than it is today.

PS 801 is meant to address all COI across a broad range of employees government-wide. It does not, however, recognize unique work situations or environments that may impact the individual public servant. For example, those public servants who work primarily in rural areas or the northern part of the province may be more likely to find themselves in COI situations given the interconnectedness of these communities. It may be necessary to allow the various ministries and government organizations to customize this section of the policy to cover the types of staffing considerations particular to them.

5.2.3 Defining Conflict of Interest

The definitions of COI contained in PS 801 are reflective of what were likely the best practices in place at the time the policy was written and later reviewed. The definitions in the policy are not ideally suited to the modern public service and would not be considered reflective of current best practice approaches to COI.

The definitions in PS 801 should be expanded to detail the many forms COI may take in the public sector. A broad list of examples should be provided with the explanation that the list is non-exhaustive. There should be enough examples to demonstrate the types of situations that the policy applies to, as well as those to which it does not apply.

PS 801 contains definitions throughout the body of the policy. For ease of reference definitions should be contained in one section of the policy.

5.2.4 Managing the Conflict

PS 801 is a reactive policy that treats all conflict situations alike and does not provide a range of options or strategies to effectively manage the range of potential situations that could result in or be perceived to result in a conflict. The management strategy as described in PS 801 appears to be a singular and prohibitive response.

As summarized in Section 3, a COI is "not necessarily the same thing as corrupt or improper conduct" and, "most conflicts can be managed and resolved in favour of the public interest if organizations have systems for managing conflicts."⁸¹ An effective management system recognizes that not all conflicts are the same and therefore, should not be dealt with in the same manner. A singular response to all conflict situations does not provide the range of options needed to effectively manage the variety of conflict situations the policy is meant to cover.

Currently, PS 801 lacks procedures for managing the range of conflict situations it is meant to address. PS 801 establishes a process that places the onus on the public servant to identify potential or perceived COI, take steps to report them and seek approval to engage in outside activities that may contain them. After these initial steps, the public servant is excluded from the decision-making process unless more information is asked of them. Lacking the adequate participation and input of the public servant, PS 801 establishes an approval process that may be slanted in favour of the interests of the employer. An exclusionary process such as this does not encourage a climate of transparency, openness and accountability in which COI can be managed.

The policy does consider some options for managing COI under the heading "Action to be Taken After a Conflict of Interest is Perceived." There appears to be some ability for the PSC Chair to place conditions on outside activity in order to manage or mitigate conflict.

The options listed under the "Action" heading are problematic, however, in that they all appear to be detrimental to the interests of the employee and favour the interests of the employer. Also problematic is the fact that there is no description offered as to how a particular course of action will be determined. Finally, there is no appeal process available for decisions made in this section of the policy.

An effective COI policy should provide a range of options to manage the range of conflicts that will occur across government. The decision on how to manage a COI situation will depend on the circumstances of each case. Every COI situation will need to be carefully reviewed and an appropriate strategy for managing the conflict will have to be developed. In some cases, one strategy may be the best solution; in other situations a combination of strategies may be necessary.

5.2.5 Roles and Responsibilities of the Parties Involved

In order for any policy to be effectively interpreted and utilized, it is important that all parties the policy applies to have a clear understanding of their roles and responsibilities. All parties to a policy need to know what they have to do in order to engage the policy and what they must do once it is engaged.

An effective COI policy identifies the roles and responsibilities of all involved in the broad and case-specific application of the policy. This includes government, the PSC, the public servant, and the supervisors and managers. Effective policies also clearly note who holds final decision-making authority for decisions made under the policy.

PS 801 is limited in that it does not clearly outline the roles and responsibilities of the stakeholders involved, nor does it outline those responsible to ensure compliance with the policy.

Responsibilities of Government and the PSC

PS 801 does not contain a statement that captures the larger organizational responsibilities of government and ultimately, the PSC, which are required to successfully implement the policy and support its ongoing use. As stated in Section 4, government and the PSC should be required to:

- establish a system for managing COI in the form of clear policy and procedures
- promote an organizational culture that supports transparency and accountability
- commit to fair decision-making under the policy
- establish a mechanism to ensure annual reviews of the COI policy occur so that it remains current and effective
- develop a confidential mechanism to receive and investigate complaints
- develop a mechanism to annually audit compliance with the policy
- publicly report any breaches and resolutions of alleged breaches in a similar fashion as is required under *The Public Interest Disclosure Act*¹²

There is no statement in the policy about creating a supportive organizational environment either within the PSC, which bears responsibility for the overall management and implementation of the policy, or within the government organizations that utilize the policy.

Responsibilities of the Public Servant

PS 801 identifies a number of responsibilities of public servants at various points throughout the policy. There is nothing inherently wrong with the employee responsibilities identified in PS 801; what is problematic is that these responsibilities are not contained as a whole in one section in the policy. The responsibilities for public servants are spread throughout PS 801. Having the responsibilities described in this way may result in public servants not being fully aware of all of their responsibilities established by the policy.

Responsibilities of Managers

PS 801 does not contain a statement that clearly captures the responsibilities of managers. The role of managers as described in PS 801 is rather limited. Managers, be they the immediate supervisor or Branch Head, appear to be the best situated to not only determine if a COI will impact the employee's ability to perform their duties, but also to assist in the creation of management and mitigation strategies.

PS 801 only appears to afford managers the opportunity to recommend or deny applications for outside employment. The responsibility for managing and mitigating conflicts appears to rest with the PSC Chair. Given the complex structure of government organizations and the many operational and organizational areas contained within them, it is not clear that the Chair is in the best position to determine appropriate management/mitigation strategies.

A better arrangement would be to have management and mitigation strategies developed together by supervisors, managers and the employee, which would then be submitted to the PSC for approval.

Responsible Officer

The COI policy should designate an individual who is responsible for ensuring compliance with the policy. This section should also explain the role and functions of this position. The procedure for appointing a responsible officer should ensure that the person appointed to that role holds a position of sufficient authority within their organization to make certain that they can implement the necessary changes for policy compliance.

PS 801 does not identify a responsible officer. There are some duties of Permanent Heads identified, as well as some responsibilities of the PSC Chair. Information regarding inquiries is directed to "Employee Relations", but it is not clear if this area exists under this name anymore. It is also not clear how one would contact this area as no contact information is provided.

5.2.6 Procedures

On the whole, PS 801 lacks procedures for its application, which should be developed as soon as possible. Procedures that are most notably lacking are those that would assist the individual public servant in disclosing conflicts.

Declaration of Interests

PS 801 does not contemplate COI situations where the personal or financial interests of a public servant, or those of a relative or close associate of that public servant, are required to be declared. However, PS 801 does provide some procedures for disclosure of interests, primarily financial interests, once the conflict has been identified.

As stated in Section 4, COI situations are often relational-based situations that are non-financial in nature. Typically, declaration of non-financial interests is made on an as needed and ad hoc basis depending on the situation. Procedures for "declaring" interests better allow for proactive and preventive conflict management strategies to be employed.

Once a financial COI involving the public servant, their relative or close associate has been identified, PS 801 does provide a process for disclosure. The policy states that if a public servant determines that a COI exists or could develop, they are to report the matter to their Permanent Head. The Permanent Head then takes the matter forward to the PSC Chair in order to reach a determination on the existence of a COI. If a conflict exists, then one of several actions can be taken ranging from divestment of the interest through to resignation of the public servant.

The disclosure process is problematic for several reasons. Firstly, it relies on the assessment of the individual public servant to determine that a conflict, as defined under the policy, actually exists. The definitions of conflicts in the policy, as already mentioned, are limited and do not adequately define the full range of COI. Secondly, and as we will discuss later in this section, the PSC does not provide training or orientation to the policy. It may be difficult to apply policy and fully disclose if one is either not aware of the policy or not aware of how to apply the policy.

In addition, in some rare instances, placing the public servant in the position of initially assessing the existence of their own COI could appear to be somewhat of a conflict in itself and may lead to judgments that are not sufficiently objective.

An effective COI policy also contemplates whether there is a need for public servants to declare financial interests or assets. Declaration of interests or assets is not necessary for every public servant and in fact, is not practical. COI policies that require public servants to declare financial interest or assets must strike a balance between government's need for transparency and the individual public servant's right to privacy. There is no need for every public servant to declare or register their financial interests or assets, but there may be a need for a select few to do so.

In an all-encompassing policy like PS 801 that is meant to cover all public servants including those in senior positions with broad decision-making authority such as an Executive Director, an Assistant or Associate Deputy Minister or Deputy Ministers, the policy needs to clearly set out if such declarations are required, and if so, when, what information is required, when it is required, how that information is to be provided and to whom.

The general rule of thumb is that the higher the office held by the public servant and the greater the decision-making authority of the individual, the stronger the argument for transparency.

It is not clear in PS 801 what, if any, declarations by senior public servants are required.

Disclosure of Conflicts of Interest as they Arise

COI will often arise during the course of the regular business of government organizations. This can occur in situations such as investigation, recruitment, tendering, inspection or audit. The policy should establish procedures for the disclosure, recording and management of conflicts that arise during the course of regular government processes and activities.

PS 801 does not include a section that contemplates the disclosure, management and mitigation of COI as they arise in the course of the normal business of government organizations. Such a section should be included in the policy.

5.2.7 Advice and Guidelines

General guidelines about how to identify, disclose and manage COI should also be included in the policy.⁸³ There should be some recognition in the policy that COI are not always clear to those involved in them. General guidelines should underscore the importance of seeking advice if an individual is unsure about a possible COI and direct them where to go for advice and who to talk to.

More detailed and specific guidelines may also need to be developed for specific roles such as senior executives or staff employed in areas that may be more prone to having COI arise. Detailed guidelines can be included in the policy, added as an appendix or made available as separate but related documents.

PS 801 does not contain a section on how employees, supervisors or managers can seek advice about the application of the policy. While some portions of this section would be best placed in a definitions section, other guidelines need to be developed. Staff applying the policy could benefit from the inclusion of tools to assist in the tasks covered in the guidelines.

PS 801 should contain clear information on how to seek advice on the application of the policy with supporting tools and procedures logically located within the policy.

5.2.8 Record Keeping

PS 801 does not discuss the record-keeping required for the effective functioning of the policy. It does not describe the nature and type of records that need to be kept regarding COI, the length of time a record is to be kept, where the record is to be maintained, and any time frame for review of the record.

The policy should consider the type of documentation required beyond the official application form. In order to ensure appropriate record retention and disposal, reference should be made to the appropriate sections of the Administrative Records Management System and Operational Records System.

5.2.9 Breaches of the Policy

An effective COI policy outlines how breaches of the policy will be handled, including any consequences for non-compliance. Consequences need to be flexible enough to be proportionate to the seriousness of the breach and to also deter employees from knowingly breaching the policy.

PS 801 describes the actions to be taken if a COI is perceived. It can be inferred that these actions could also be taken if the policy is violated. The policy should be written so that the consequences for breaches of the policy are clearly identified.

5.2.10 Privacy

The policy should note that reporting potential or actual conflicts may involve disclosing personal information. This information will be handled according to the relevant privacy legislation and the organization's privacy policy.

PS 801 does not contain any reference to the legislative or policy framework it operates under with respect to privacy.

The lack of such reference clearly demonstrates the need for a revision of PS 801. The policy contains no reference to *The Freedom of Information and Protection of Privacy Act* (FOIP),⁸⁴ *The Health Information Protection Act* (HIPA),⁸⁵ or the *Overarching Personal Information Privacy Framework for Executive Government*.⁸⁶ The fact that the latest revisions to PS 801 predate both HIPA and the Framework speak to the need for a revision; however, there is no reason why FOIP should not have been considered in the policy.

5.3 Appeals under PS 801

A significant limitation of PS 801 is its lack of appeal processes.

The wording of the appeals section of PS 801 suggests that the only appeal available under the policy is if an employee has been sanctioned for violating the policy. If a public servant has been disciplined for violating PS 801 and disagrees with that disciplinary action, the policy provides a process to appeal that disciplinary action.

There is nothing wrong with this portion of the policy, but what appears to be missing in PS 801 is a method for employees to appeal other adverse decisions made under the policy that they may disagree with.

The escalating levels of review of the decision to recommend or not recommend outside employment suggests that only the decision will be reviewed. There is nothing to suggest that at any point in this process the affected employee is given an opportunity to challenge the decision, provide further evidence or make any other representations that might change the decision, unless one of the decision-makers requests further involvement from the employee.

The *Public Service Act, 1998* (PSA) does not appear to contemplate appeals related to outside employment;⁸⁷ the PSA contemplates appeals regarding positions, lay-off, dismissal and demotion. The Public Service Regulations only appear to contemplate appeals related to classification.⁸⁸ Given the lack of legislated appeals, it would be appropriate for an appeal process to be built into the policy.

5.4 Annual Policy Reviews

An effective policy should set out a time frame for its review and revision. The best policy written today will not remain effective in the long term if it is not reviewed and revised. For a policy to stand the test of time and remain effective and relevant, it must have a time frame for review and revision so that it keeps pace with the changes that naturally occur in any organization. Best practices suggest that the optimal time frame for such a review to occur is on an annual basis.

PS 801 has not been updated since 1994; because it has not been regularly reviewed, the policy has become out of date and is not reflective of best practices.

Our review found that there is presently no ongoing review of policy by the PSC. It was suggested that there has been a desire for a full-scale policy review, but that the resources necessary to carry out this kind of a review of the policies that PSC is responsible for are limited.⁸⁹ As such, policies within PSC are reviewed on an as needed basis.

It would be prudent for the PSC to complete a full review of the policy and include supplemental materials where necessary.

“One of the most difficult management challenges is ensuring that policies, once drafted, do not sit on the shelf but become part of the organization's culture”⁹⁰

5.5 Training and Support

Training and raising awareness are key pieces to the effective application of a government-wide COI policy. If public servants are not properly informed about a policy and its application, then it can never be considered fully implemented. Public servants, including supervisors and managers, need to know about the policy, how it applies to them, and their responsibilities under the policy. Without this knowledge the policy is rendered ineffective. An effective COI policy will include educational materials, supporting documents and training about the policy and its application.

We found public servants are advised of the COI policy in their letter of offer and when they sign an oath of office. Beyond this, PS 801 lacks materials that support the consistent application of the policy across the public sector. In the course of our review we learned that the PSC does not provide any materials that would aid public servants or managers in the interpretation and application of PS 801.

Without any supporting documents or resources, public servants and their managers may find themselves in a difficult position should they have questions about how to interpret or apply the policy. At present, the only guide to how to interpret and apply the policy is the policy itself.

It is also our understanding that the PSC does not provide regular training to either public servants or decision-makers in the interpretation and application of PS 801.

Without training it may be difficult for public servants to determine what they should or should not disclose and when such disclosures are required. In addition, without training, the frontline decision-makers (those managers who determine if conflicts exist) are required to reach a determination of whether or not activities that employees seek approval for are COI. In certain instances the determination may be reached easily; in others the determination may not be so clear-cut. These decision-makers should have ready access to the abundance of available resources on the subject of COI and to expert opinions to assist them in reaching their determinations about COI.

5.6 Conflict of Interest Policy – Where We Are and Where We Want to Be

The present state of COI policy as it applies to the Saskatchewan public service begins and ends with PS 801. PS 801 establishes processes that place the onus on the public servant to identify COI, take steps to report them and seek approval to engage in outside activities that may contain them. Public servants are then largely excluded from the decision-making process after that. Lacking the adequate participation and input of the public servant, PS 801 establishes approval processes that may be slanted in favour of the interests of the employer.

The ideal approach to addressing COI in the public sector is one that seeks to balance the interests of both employer and employee. This requires a shift from reactive processes, which assume that conflicts exist and then largely excludes the employee, to proactive processes in which both employer and employee have key roles in assessing and managing COI.

In order to arrive at this new approach, we suggest the development of a new COI policy and framework based on best practices that incorporate procedural fairness and balance the interests of public servants, government, and the citizens they serve.

Section 6: Recommendations

6.0 Recommendations

PS 801 is intended to protect "the public interest by outlining guidelines for public employees which ensure that a conflict of interest does not or does not appear to exist."⁹⁰ In some situations government organizations will identify actual COI; in others a potential COI or the perception of a COI may be identified.

It is inevitable that COI situations will arise in the public service. Having a COI should not bar public servants from participating in activities or employment outside the public service; rather, it may be simply that a situation needs to be recognized and addressed, possibly by means of a mitigation strategy.⁹²

Our review of PS 801 was prompted by an individual complainant who sought approval to run for elective office but was denied. While that situation has been resolved, it did highlight gaps in the policy. We have found that PS 801 is a policy that does not reflect current best practice approaches to addressing COI in the public service and has not kept pace with the changing structure of the modern public service.

It is important that PS 801 be replaced by a more modern COI policy. PS 801 applies to every public servant in this province. These employees deserve to be provided a policy that is in line with current best practices. It is equally important that the interest of the public, which is surely shared by the government, in having an accountable and transparent government is in part addressed through such a policy.

Recommendation 1

The PSC create a new COI policy for the Saskatchewan public service to replace PS 801. The new COI policy should be based on current best practice approaches to dealing with COI.

Current approaches to COI in the public service utilize comprehensive frameworks that support the associated policy and help create supportive organizational cultures; this is the approach that we recommend the PSC take. Taking this approach will involve, among other things, the development of a new COI policy for Saskatchewan's public service, the creation of training materials and supporting resources, and the provision of training to those who will implement and apply the policy.

Recommendation 2

The PSC develop and implement a comprehensive COI framework that will support the new COI policy and provide the basis for organizational structures that support the effective identification and management of COI.

We recognize that such an approach will take time to develop and implement. Interim measures will need to be taken to address COI while that work is being done. As such, we offer recommendations for immediate implementation to bridge the existing gaps in policy. We also offer long-term recommendations, which are intended to help modernize approaches to COI in the Saskatchewan public service and harmonize those approaches with current best practices.

6.1 Recommendations for Immediate Implementation

Replacing PS 801 with a more modern COI policy will take some time. While that work is being done the PSC can take some steps to address gaps in the current policy. Some of these gaps are simple house-keeping items that can be easily addressed with updated references; others require more attention.

Recommendation 3

To ensure that PS 801 can stand as an interim policy, the PSC should update PS 801 so that it includes references to ministries and other updated references.

It is imperative that the Chair of the PSC clarify the roles and responsibilities of that position, as well as the roles and responsibilities of Permanent Heads. Final decision-making authority under PS 801 rests with the Chair or designate, while Permanent Heads have recommendation-making authority. It is important that this distinction be reinforced so that decisions made under the policy are in keeping with the process it establishes.

Recommendation 4

The Chair communicate to all public servants the roles and responsibilities under PS 801 of the position of the Chair, the Chair's designates, Permanent Heads and public servants.

It is also important for the Chair to reinforce the need to protect confidentiality and privacy in processes initiated under PS 801. There is no recognition of privacy legislation in PS 801. It can be assumed that the policy has been operating under the assumption of confidentiality; however, the requirements for confidentiality and privacy should be clarified by the Chair.

Recommendation 5

The Chair communicate to all public servants the need to make sure that all processes under PS 801 respect the requirements of *The Freedom of Information and Protection of Privacy Act*, *The Health Information Protection Act* and the *Overarching Personal Information Framework for Executive Government*.

The processing of requests for approval under PS 801 should occur in a timely fashion. Currently, in PS 801 there are no timelines for the employer to respond to an application. Without timelines, the current policy creates an environment in which it is not necessary to provide a timely response. We have seen cases in which it took over 60 calendar days to provide a response to a request for approval.

Under *The Freedom of Information and Protection of Privacy Act*, government institutions must provide a response to access requests in 30 calendar days. If more time is needed notice must be provided to the applicant. A 30-day period in which to provide a response to an access to information request affords government institutions an adequate period in which to gather records, engage in consultations and prepare the records for release. With notice provided, a second 30-day period can be utilized if needed. This approach should be taken with PS 801.

Recommendation 6

The PSC institute a 30-day response period to applications for outside employment under PS 801. If further time is required in which to provide a response, the applicant should be notified of this necessity and be provided with a new anticipated response date.

In order to address immediate concerns with procedural fairness, the Chair should allow appeals of decisions made under PS 801. Presently, the only decisions that can be appealed are those with respect to disciplinary actions taken against public servants who have violated the policy. Only those who have been disciplined for doing something wrong have the ability to appeal; those who simply disagree with a decision made under the policy are left with no way to challenge that decision.

Recommendation 7

The Chair establishes a process for the hearing of appeals of decisions made by designates under the policy.

Finally, in the short term it is prudent for the PSC to monitor outcomes of processes resulting from PS 801. Until a new policy and framework is implemented the only way for the Chair to ensure that PS 801 is being effective is to track outcomes and audit decisions.

Recommendation 8

The PSC begin the ongoing monitoring of outcomes under PS 801 and random auditing of decisions made under the policy.

It must be recognized that these are short-term solutions which bring current practice with respect to COI to what would be considered the minimum required by today's best practice standards. These are not solutions that will produce sustainable, consistent, equitable outcomes in the long run.

6.2 Long-Term Recommendations

In order to achieve the long-term outcomes previously described, we must return to the reason we were asked to review PS 801 in the first place. We were asked to look at the "fairness" of PS 801 in relation to a specific case, and in doing so, we also looked more generally in terms of the "fairness" at the policy itself.

Our review has found that the shortcomings of PS 801 are too numerous to be addressed by a simple updating; as a result we have recommended that PS 801 be replaced with a modern comprehensive COI policy framework.

Creating this kind of a framework sounds like a daunting task, but it is one that given the importance of the area to which the policy applies, should reasonably be expected to be completed within a finite period of time. With adequate and dedicated resources it is reasonable to expect that the recommendations that follow can be implemented within 12 months.

6.3 Development of a COI Framework

We have discussed the importance of a comprehensive COI framework in ensuring that COIs are appropriately identified and managed in the public service, and have recommended the development and implementation of this kind of framework. Implementing this kind of framework should ensure that COI's in the Saskatchewan public service are appropriately addressed.

Effectively dealing with COI increases public trust in government while balancing the needs of both the employee and the employer. As stated in the *Conflict of Interest Policy Framework* for the State of Victoria:

By taking a consistent and open approach to resolving or managing conflicts, organisations will encourage staff to follow policy and procedures. Members of the public, stakeholders, partner agencies and client groups should be made aware of the organisation's policies and procedures for managing conflicts of interest. They can then be more confident that the organisation and its employees will not act prejudicially or improperly.⁹³

The Chair will play a key role in ensuring the important message is carried forward to the senior leaders of government. The Chair will have to champion this cause and provide the PSC with the tools and resources it needs to take the lead in developing and implementing this framework.

Implementing a comprehensive COI framework is essential to ensure that COI are "seen to be managed fairly and effectively. To achieve this, the processes for identifying, disclosing and managing conflicts of interest must be transparent – that is, the processes should be open to scrutiny, [to] help maintain accountability."⁹⁴

A comprehensive COI framework can be compared to an iceberg. The COI policy and the decisions made under it are the parts of the iceberg that are visible above the water. The biggest part of the iceberg however, the part that is not visible to everybody, is the part that is under the surface. In the case of a COI framework, the part that is below the surface is all the processes and resources that will support the policy and its outcomes.

6.3.1 Training and Support

We have discussed the importance of establishing a COI-ready organizational culture based on a supportive framework of legislation, policy, training and resources. We have suggested that the nature and form of employment in the public service is changing and that as a result of this change, new forms of COI may be identified that will need to be appropriately managed and mitigated.

PS 801 lacked this type of supportive framework. There are currently few materials and little training that support the policy. In the absence of adequate support, the current policy has the potential to be misapplied. Moving forward it will be essential that the PSC develop materials to support the application of a new COI policy.

Recommendation 9

The PSC develop materials and resources to support the implementation, interpretation and application of a new COI policy for the Saskatchewan public service.

The implementation of a new COI policy and framework suggests a fundamental shift in the way that government has traditionally approached COI in the public service. The framework will require a shift from a policy that is primarily reactive to one that is proactive, anticipating that COI will exist and focussing on how to best manage and mitigate the risks associated with conflicts. In order for this kind of organizational culture shift to be fully understood and accepted, it will be necessary to provide training to public servants who will use the policy and those who will be tasked with interpreting and applying it. The PSC will need to develop training to address these needs.

Recommendation 10

The PSC develop and deliver training for the public service on the development, implementation, interpretation and application of a new COI policy.

6.3.2 Tracking and Auditing

As a new policy and framework are rolled out and implemented, the PSC must ensure that adequate processes are in place to audit decisions made under the policy. The tracking and auditing of decisions helps to ensure that decisions under the policy are fair and consistent.

The PSC will need to develop processes to track and audit decisions under the COI policy to ensure that outcomes comply with the purpose of the policy and are made in a fair and timely fashion.

Recommendation 11

The PSC ensure that tracking and auditing processes aimed at ensuring fair and consistent outcomes are built into the new COI policy and framework.

6.4 Development of a Modern COI Policy

There has been much work done in recent years addressing the requirements of effective modern COI policy. The PSC is in the fortunate position of having this wealth of experience and research to rely on in developing a new COI policy for the Saskatchewan public service.

When developing a new COI policy, the PSC should ensure that it meets the following recommendations and includes the following components in its content.

6.4.1 Statement of Philosophy

PS 801 does not include any statement of a general philosophy underlying the policy. For instance, if the intent of the policy is to generally approve outside activities and the onus is on the employer to demonstrate why an activity should not be allowed, then this intent should be noted in the policy. Whatever the philosophical intent behind the policy, it should be noted in order to facilitate consistent application of the policy.

Recommendation 12

A new COI policy must include a statement of the general philosophies underlying the policy.

6.4.2 Definitions

The definitions used in Section 3.8 and included in the glossary are examples of the types of definitions we would suggest the PSC consider adopting in a new COI policy. Definitions in the new COI policy must also be written in clear and simple language.

Recommendation 13

A new COI policy must include adequate definitions that are clear and concise, and are written in plain language.

6.4.3 Appeals

PS 801 lacks appeal processes for employees whose application for outside employment is denied. As we have discussed, there is only one available appeal under PS 801 as it currently stands. That appeal is reserved for those employees who have been disciplined for a violation of PS 801; they can appeal the disciplinary action taken against them. No other appeals exist under PS 801, so if a public servant

disagrees with a decision about a request for approval they cannot appeal the decision. Under PS 801 public servants are left with few options but to escalate issues they may have with decisions made under PS 801 to their union or to independent offices such as Ombudsman Saskatchewan.

Recommendation 14

A new COI policy must include a robust appeal process for those public servants who disagree with decisions made under the policy.

6.5 Delegation of Authority

Final decision-making authority under PS 801 rests with the Chair of the PSC or designate. It is the responsibility of the Chair to ensure decisions are made that are consistent with the purpose of PS 801 and balance the interests of public servants to carry out their public duties without causing their private interests to suffer. There is no authority noted in PS 801 for the Chair or designate to relinquish decision-making responsibility to the government organization involved.

It is not practical to think that the Chair will consider all requests made under PS 801 or under a new COI policy; that is why the ability to delegate authority has been included. In choosing what level to delegate decision-making authority to, the Chair must ensure that the delegate has sufficient standing within a government organization to be seen as an effective replacement for the Chair.

The PSC currently has human resource (HR) teams embedded within many of the government organizations it serves. In many instances decision-making authority of the Chair under PS 801 has been delegated to HR consultants embedded within the ministries. We recognize that for the majority of cases where approval for outside employment is sought, this would be an appropriate level for decision-making authority to be delegated. For more complex cases, however, this arrangement may not afford enough of an impartial review of recommendations prior to a decision on an application being rendered.

HR consultants play an important consultative role in the process of decision-making related to PS 801. Giving HR consultants the final signing authority under PS 801 may place them in the difficult position of providing advice and consultation on a recommendation and then reviewing that very same recommendation to determine if it is appropriate. It is a difficult and conflicting role for HR consultants to serve as both advisor and approver.

HR consultants may also not be adequately situated within a ministry's hierarchy to challenge, if required, the decisions of ministry managers inclusive of those decisions made by the Permanent Head. Though the authority of the Chair has been delegated down to HR consultants, the practicality of such a delegation may be tested in situations where a consultant disagrees with ministry managers who hold the final decision-making authority in the ministry.

Recommendation 15

A new COI policy must include processes that ensure the authority of the Chair is delegated in such a way so that decision-makers are not placed in a position that could lead to the perception of bias. This may mean that in situations in which HR consultants are providing advice and consultation on a request, the final decision-making authority should be shifted outside the ministry and the PSC team involved.

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Appendix A



Saskatchewan
Public Service
Commission

Human Resource Manual
www.psc.gov.sk.ca/hrmanual

Section: PS 801

Conflict of Interest

Date issued: 1986 09 01

Revision date: 1994 02 28

Purpose

To protect the public interest by outlining guidelines for public employees which ensure that a conflict of interest does not or does not appear to exist.

Definitions

Conflict of Interest

Is a situation in which a public employee, either for himself/herself or some other person(s), attempts to promote a private or personal interest which results or appears to result in:

- an interference with the objective exercise of public service duties
- a gain or an advantage by virtue of his/her position in the public service

Policy

The permanent head or designate shall administer their department in accordance with the guidelines and ensure that public employees review and are aware of the Conflict of Interest Guidelines.

Application

All employees appointed under *The Public Service Act*

Guidelines

See Appendix for Conflict of Interest Guidelines

Authority

PSA Regs, Part 7, Section 95

Inquiries

Employee Relations



Section: PS 801-A

**Conflict of Interest
Appendix**

Date issued: 1986 09 01

Revision date: 1994 02 28

A. General Statement

Due to the nature of the public employee's responsibilities, which entail the promotion of the public interest, it may, in some cases, be necessary to restrict the activities of the public employee to ensure that a conflict of interest does not appear to exist.

The range and complexity of government activities are such that it is not possible to produce a detailed complete list of all conflict of interest situations. The purpose of these guidelines is to clarify those activities which may constitute conflict of interest situations; they are not designed to be exhaustive.

If questions arise that are not specifically dealt with by the guidelines, they should be settled in accordance with the general principles of the guidelines.

B. Definition: Conflict Of Interest

A conflict of interest is any situation in which a public employee, either for himself/herself or some other person(s), attempts to promote a private or personal interest which results or appears to result in the following:

- i. an interference with the objective exercise of his/her duties in the public service
- ii. a gain or an advantage by virtue of his/her position in the public service.

C. Application

These guidelines are applicable to all employees appointed pursuant to the Public Service Act.

D. Guidelines Concerning Employee Disclosure Requirements

E. General Guidelines on the Application of the Policy

F. Appeal Process



Section: PS 801-Disclosure

**Conflict of Interest
Guidelines Concerning Employee
Disclosure Requirements**

Date issued: 1986 09 01

Revision date: 1994 02 28

1. Outside Employment:

Public employees must have the written authorization of the Chair of the Public Service Commission prior to undertaking employment outside the public service.

Definition

The following criteria should be used to assist in determining whether a public employee is involved in an activity (related or unrelated to his/her work in the public service) which constitutes outside employment:

- self-employment
- activities from which there is a monetary reward
- activities where a service or advice is provided and an honorarium received

If one or more of the above criteria are characteristic of the employee's activity, then such an activity is defined as outside employment.

Examples of activities which are considered to be outside employment:

- farming
- freelance journalism
- rental of machinery or equipment
- consulting work
- the sales of goods or services
- employment in service industries, that is, bars, restaurants, resorts, etc.

Outside employment will be permissible as long as such employment:

- is not forbidden by legislation
- does not interfere with the public employee's performance of his/her regular duties



Section: PS 801-Disclosure

- does not use advantages derived from employment in the public service
- does not involve the use of government premises, supplies, equipment and/or government personnel, etc..
- is not performed in a manner as to appear to be an official action or policy

A public employee who wishes to undertake outside employment must inform his/her permanent head of this matter by completing an "Approval for Outside Employment" form. The permanent head shall, upon receipt of this information, submit the request to the Chair, together with his/her recommendation for or against the request. The Chair shall take this recommendation into account when making his/her decision. The employee must have written authorization from the Chair of the Commission prior to engaging in outside employment.

Guidelines Concerning Public Employees Teaching in Educational Institutions

Employees may, with the prior written approval of the Chair of the Public Service Commission, teach courses at institutions, including other government departments and agencies, for a fee during normal working hours provided that:

- a) acceptable arrangements are made for the employee to perform all regular duties
- b) course preparation and marking is done on the employee's own time
- c) no other conflict arises

If a situation arises where an infringement upon the public employee's normal duties is unavoidable, the Chair of the Public Service Commission may require that part or all of the fee received be paid to the Minister of Finance.

2. Management of Private Affairs and Investments:

Upon appointment to public office, public employees are expected to arrange their private and financial affairs in such a manner that no possible conflict of interest exists or appears to exist.

Definition

The intent of this section of the guidelines is to deal with the financial interests (both investments and private assets) a public employee has which may put him/her into a conflict of interest situation.

Private affairs should be interpreted as private assets, such as ownership of property or indirect financial dealings, or ownership such as the ownership of stocks or bonds by an employee's spouse, which might be or appear to be a conflict of interest.



Section: PS 801-Disclosure

If a public employee perceives that a conflict of interest exists, or has the potential to develop, as the result of his/her financial dealings or the financial dealings of a relative or close associate, s/he must inform the permanent head of his/her department. The permanent head shall then report this matter to the Chair of the Public Service Commission who shall decide whether a conflict of interest situation actually exists.

Criteria for Disclosure

A public employee in Municipal Government with substantial land holdings adjacent to Regina holds a position with the department that could be used to influence decisions which will cause the value of his/her property to rise substantially.

A procurement officer has interests in an office equipment firm. S/he could use the information gained on the job to ensure this firm submits the lowest tender.

An Economic Development consultant approves substantial loans and grants to manufacturing firms; his/her spouse owns 35% in a manufacturing firm.

3. Exceptions to the General Statement:

- a) If a permanent head becomes aware that a public employee is involved in financial, commercial or business transactions which might constitute a conflict of interest, s/he can demand that the public employee give a full disclosure of these interests. If the public employee's disclosure substantiates the permanent head's concerns, s/he shall report this matter immediately to the Chair of the Public Service Commission.

The permanent head, after prior consultation with the Chair of the Public Service Commission, has the authority to demand a financial disclosure statement from his/her employees who have discretionary power in regard to financial issues; e.g. purchasing agents, tax and fiscal analysts, employees involved in the allocation of grants or the awarding of contracts.

- b) Permanent heads (and equivalents) shall file their disclosure statements with the Minister responsible for the Public Service Commission.

The Minister responsible for the Public Service Commission has the authority to demand a financial disclosure statement from a permanent head (or equivalent) if s/he perceives that the permanent head is involved in a financial, business or commercial transaction which might constitute a conflict of interest. The permanent head's disclosure statement will be confidential and if the concerns of the Minister responsible for the Public Service Commission are well founded, the issue will be taken to Cabinet for a decision.



Approval for Outside Employment/Activity and/or Disclosure of Other Outside Activity/Interest which may Create a Real or Perceived Conflict of Interest

To seek approval to engage in outside employment and/or to disclose other outside activities/interests as required by the Conflict of Interest Guidelines in Policy PS 801:

- 1) Approval is required before engaging in outside employment.
- 2) This form should be completed by public employees prior to engaging in other activities/interests that may result or appear to result in a conflict of interest.

Name: _____
(please print)
Ministry: _____
Location: _____
Division/Branch: _____
Position: _____

Type of Public Service Employment:

Permanent Full time: ☐

Permanent Part time: ☐

Labour Service: ☐

Term: ☐

Other: ☐ _____
(e.g., O/C, MA, CUPE relief)

1. (a) Type of outside employment/activity:
 - i) ☐ Self employment.
 - ii) ☐ Employment/activity from which there is a monetary reward.
 - iii) ☐ Employment/activity where a service or advice is provided and an honorarium is received.
- (b) Type of other outside activity/interest which may create a real or perceived conflict:
 - i) ☐ Volunteer activity.
 - ii) ☐ Family ownership of private asset(s) or business interest.
 - iii) ☐ Other _____.

2. Identify and explain the outside employment/activity/interest (including the location) identified in 1(a) and 1(b) above:

3. The outside employment/activity/interest identified in 1(a) and 1(b) above:

- (a) Interferes with the performance of my regular duties.
Yes ☐ No ☐
- (b) Uses advantages derived from employment in the Public Service.
Yes ☐ No ☐
- (c) Involves the use of government premises, supplies, equipment, employees, etc.
Yes ☐ No ☐
- (d) Is performed in a manner as to appear to be an official act or policy of the Ministry/Government.
Yes ☐ No ☐
- (e) Is done during my normal working hours.
Yes ☐ No ☐
- (f) May create a real or perceived conflict of interest.
Yes ☐ No ☐

Explanation:

Signature of Employee

Date



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4. Recommendation by Immediate Supervisor:

- (a) ☐ Recommended (b) ☐ Not Recommended

Explanation:

Signature of Immediate Supervisor

Date

5. Recommendation by Branch/Division Head:

- (a) ☐ Recommended (b) ☐ Not Recommended

Explanation:

Signature of Branch/Division Head

Date

6. Recommendation of Permanent Head (or designate):

- (a) ☐ Recommended (b) ☐ Not Recommended

Explanation:

Signature of Permanent Head (or designate)

Date

7. Decision of Chair, Public Service Commission (or designate):

- (a) ☐ Approved
(b) ☐ Approved provided the following action is taken:

- (c) ☐ Refused

Explanation of refusal:

Signature of Chair (or designate)

Date

Send completed form to your Human Resource Service Team, Public Service Commission.

Signing protocols within Ministries may not require the immediate Supervisor or Branch/Division Head to sign; however, for the PSC to consider the request, the Permanent Head (or designate) must recommend and sign.

Once signed by the Chair or designate, a copy will be placed on the employee's PSC personnel file.

Supporting information can be attached, as needed.



Section: PS 801-Application

**Conflict of Interest
General Guidelines on the Application
of the Policy**

Date issued: 1986 09 01

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1. Dealings with Family, Friends, Business Associates, Former Business Associates and Voluntary Associates:

Public employees who exercise regulatory, inspection and/or discretionary control over others must not give or appear to give preferential treatment to family members, friends, business associates and/or former business associates.

Public employees who exercise regulatory, inspection and/or discretionary control over others must not give or appear to give preferential treatment to any private or public body such as municipal council, school board or volunteer organization of which they are a member.

2. Public Employee's Professional Interaction with Family Members:

Due to the fact that family ties vary from family to family, the Chair of the Public Service Commission and/or permanent head of a department must use his/her discretion in determining whether or not a conflict of interest situation exists due to the interaction of a public employee and a family member.

3. Acceptance of Gifts:

A public employee should never accept any gift or service which could be viewed as a payment for services rendered through his/her employment in the public service.

- a) a public employee may accept any gift which represents the normal exchange of gifts between friends; the normal exchange of hospitality between persons doing business together; or tokens exchanged as part of protocol
- b) public employees accepting any payment, gift, honorarium or gratuity, in addition to their salary paid by the government, which is actually or may be viewed as payment for services provided through their public employment, would be in conflict with this guideline

4. Use of Information:

Public employees are not prevented from using government information which is available to the public in the management of their private affairs. However, where such information is not available to the public, public employees must manage their private affairs so that neither they nor their relatives, friends, business associates, or former business associates benefit or appear to benefit from the use of such information.



Section: PS 801-Application

A public employee must not reveal government information to any unauthorized individual prior to its public release date.

5. Future Employment:

A public employee should not let himself/herself be influenced in the carrying out of his/her responsibilities by the prospect of employment elsewhere.

6. Examples of Conflict of Interest Situations:

The following is a short list of examples of conflict of interest situations; it is not intended to be all-inclusive:

- a) where the public employee may influence the decisions of the Government in dealing with a company which conducts business with the Government, when the company is largely owned or controlled by a public employee or an immediate relative, or in which s/he may have an interest
- b) where the public employee may influence the decisions of a ministry in respect of a particular company or municipal body which is applying to a ministry for a loan, grant or other advantages, when the public employee has a significant responsibility in the affairs of the applicant, e.g. s/he is a trustee of land or other property
- c) ownership by a public employee of land or other property where a property value may be influenced by the public employee
- d) where a public employee accepts favours from an individual, organization or corporation which deals or may deal with the Saskatchewan Government and where the public employee is or may be in a position to influence the dealings
- e) when members of a public employee's immediate family receive personal benefits as a result of the position of the public employee

7. Action to be Taken After a Conflict of Interest is Perceived:

The Chair of the Public Service Commission, after a conflict of interest comes to his/her attention and/or violation of the preceding guidelines comes to his/her attention, has the following possible options for action available to him/her:



Section: PS 801-Application

- a) instruct the public employee to divest himself/herself of his/her financial investments
- b) instruct the public employee to transfer his/her financial interests to a blind trust
- c) remove the public employee from the responsibilities which are causing the conflict of interest
- d) accept the public employee's resignation
- e) recommend to the Attorney General that the situation be investigated



Section: PS 801-Appeal Process

**Conflict of Interest
Appeal Process**

Date issued: 1986 09 01

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1. In Scope Employees:

If disciplinary action is taken against an in scope employee for violation of the conflict of interest guidelines and the employee feels that such action is unfair then s/he should follow the grievance procedure as established in his/her union's collective agreement.

2. Out of Scope Employees:

If disciplinary action is taken against an out of scope employee for violation of the conflict of interest guidelines and the employee feels such action is unfair, then s/he should notify the Chair of the Public Service Commission of his/her desire to appeal the decision. The Minister responsible for the Public Service Commission shall be informed of this fact, by the Chair, and shall appoint a committee of at least three public employees to hear the appeal.

Glossary

Administrative Decision

Any decision made by a **public servant** who is acting under a grant of power under legislation, which includes decisions that are delegated by the statutory decision-maker. This includes decisions made by an administrative board, tribunal or committee created in legislation to deal with specific issues. It also includes decisions made by various individuals working for the government, from ministers to **Permanent Heads** to junior public servants. It does not include decisions made by the legislature itself, decisions made by the courts, and private decisions.

Branch Head

A position designation within the Saskatchewan **public service**, often an individual at the level of an Executive Director.

Chair

The Chairperson of the **Public Service Commission** appointed pursuant to *The Public Service Act, 1998* (the Act).

Conflict of Interest (COI)

A conflict between the public duty and the **personal interest** of a **public servant**, in which the public servant has private-personal capacity interest that could improperly influence the performance of their official duties and responsibilities. This may include an **actual conflict of interest**, where a direct conflict between a **public servant's** current duties and responsibilities and their existing **personal interests** exists. It may also include a **perceived conflict of interest** where it could be perceived by others that a **public servant's personal interests** could improperly influence the performance of their public duties – whether or not this is the case. Or it could involve a **potential conflict of interest** where a **public servant** has **personal interests** that could interfere with their official duties in the future.

Designate

An employee of the **Public Service Commission** working under the **Chair** who is designated by the Chair as required by the Act to exercise the Chair's powers and fulfill the Chair's duties.

Disclosure

A formal process of providing notice under the COI policy that the **public servant** is or may engage in an activity or has interests that may be in conflict with their job duties.

Fairness

A term that describes both a concept and a process. Fairness, as a concept, is context specific in that what is fair to any one person will be dependent on multiple subjective factors including, but not restricted to, personal and interpersonal factors (e.g. culture). As a process, fairness is content specific in that what is fair will depend upon multiple objective factors including, but not restricted to, the process as provided by the authority granting structures such as legislation or policy by which the decision was made, the role of the decision-maker, and the outcome of the decision.

For the Ombudsman's purposes, the term fairness is used to describe three overlapping fairness attributes that take into consideration both content and contextual factors that influence and shape **administrative decisions** made within the **public service sector**. These include **procedural fairness**, **relational fairness** and **substantive fairness** described as follows.

Procedural Fairness: Refers to the process used to make a decision.

Relational Fairness: Refers to the treatment of the parties involved in a decision-making process or affected by a decision outcome.

Substantive Fairness: Refers to a decision outcome. To be substantively fair a decision must be based on relevant information and be correct factually and legally.

Financial Disclosure Statement

A statement outlining the assets, income and other **financial interests** of a member of the **public service** that may be required to be provided under the **Public Service Commission's COI** policy.

Financial Interest

Assets, income or investments of an individual including property, stocks or bonds.

In-scope Employee

A member of the **public service**, appointed under the Act, who is also a member of a union.

Non-pecuniary Interest

An interest of a **public servant** where there is no financial component, but where the public servant may tend toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias judgment or decisions. Non-pecuniary interests may arise from personal or family relationships or involvement in sporting, social or cultural activities.

Out-of-scope Employee

A member of the **public service**, appointed under the Act, who is not a member of a union.

Outside Employment or Activities

Employment or activities outside of the **public servant's** normal job duties that involves financial compensation of some sort, including self-employment, activities from which there is a monetary reward, and activities where a service or advice is provided and an honorarium received.

Pecuniary Interest

An interest of a **public servant** that involves personal gain of the public servant through their employment, either direct or indirect. Pecuniary interests can also occur when no **financial interest** is involved and no money actually changes hands.

Permanent Head

The head of a government organization. In the case of most government organizations, the Permanent Head is the Deputy Minister, President, or other official in charge of the ministry, agency, board or commission, who is directly responsible to a member of the Executive Council. In the case of a Crown corporation, the Permanent Head is the Chief Executive Officer of the Crown.

Personal Interest

Any interest, broadly understood, that is personal and could impact a job duty or obligation and could include employment or activities for which there may be some form of financial compensation outside of the **public servant's** job and also activities or relationships that might not involve payment.

Public Servant	A person appointed under the Act and working for government in a ministry or other government organization; also referred to as a public employee. This does not include employees of Crown corporations, boards and agencies. Public servants range from people building highways to Deputy Ministers.
Public Service Commission (PSC)	The central human resource agency for the Government of Saskatchewan, in charge of providing human resource management and expertise to the government's public servants , ministries and other organizations.
Public Service Sector	All of the public servants , appointed under the Act, who work for the government of Saskatchewan in its various organizations and ministries.
Post-employment Conflict of Interest	When a public servant leaves the public service, either temporarily or permanently, to work in the private or not-for-profit sector and either uses or misuses information acquired while in government to benefit themselves or others prior to their departure or after their departure.
Recruit	A COI management strategy where a neutral third party is brought in to assist in dealing with the COI .
Register	A COI management strategy where public servants proactively register private interests that could result in a COI .
Relinquish	A COI management strategy where a public servant makes the choice to give up the personal interest instead of making any changes related to their employment.
Remove	A COI management strategy where a public servant is temporarily removed from their position while a more permanent solution to the COI is put in place.
Resign	A COI management strategy where a public servant withdraws from their position as the result of a COI .
Restrict	A COI management strategy where reasonable restrictions are placed on a public servant's involvement in the COI .
Standards of Fairness	A set of criteria outlined in Section 27 <i>The Ombudsman Act, 2012</i> that are used by Ombudsman staff to assess the lawfulness, merits, and reasonableness of an administrative decision .

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- 15 PS 801, *supra* note 6.
- 16 When completing individual case reviews and publicly reporting on those cases, it is our practice to maintain the confidentiality of those involved. Though the impetus of our larger report was the individual case, and some non-identifying factors in that case are reported here, we will not identify the individuals involved in the case.
- 17 *The Public Interest Disclosure Act*, S.S. 2011, c. P-38.1.
- 18 Kevin Fenwick was appointed as acting PID Commissioner on February 28, 2012 and later as the Commissioner on May 3, 2012.
- 19 Public Service Commission website. *Public Interest Disclosure Act*. Retrieved July 25, 2012 from <http://www.psc.gov.sk.ca/pida>. Note: the legislation is not placed in italics at the source.
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- 42 We refer to public servants, rather than public officials.
- 43 OECD Guidelines, *supra* note 14, at p. 97.
- 44 Gençkaya, *Academic Research Report*, *supra* note 37, at p. 12, citing Demmke, C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikkor and A. Salminen (2007). *Regulating Conflicts of Interest for Holders of Public Office in the European Union*. European Institute of Public Administration.
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- 46 MacDonald, *Conflict of Interest*, *supra* note 41.
- 47 MacDonald, *Ibid.*
- 48 MacDonald, *Ibid.*
- 49 OECD Guidelines, *supra* note 14, at p. 4.
- 50 OECD Guidelines, *Ibid.*, at p. 3.
- 51 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*.
- 52 This is required under section 1 of the *Charter of Rights and Freedoms* and the known test for examining the ability of government to limit rights under the Charter which was provided by the Supreme Court of Canada in *R. v. Oakes*, [1986] 1 S.C.R. 103.
- 53 OECD Guidelines, *supra* note 14, at p. 7.
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- 55 *Privacy By Design*, *Ibid.*, at p. 1.
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- 57 ICAC Toolkit, *Ibid.*
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- 59 ICAC and CMC of Queensland (undated). *Identifying Conflicts of Interest in the Public Sector brochure (Identifying Conflicts)*. On-line: retrieved from <http://www.icac.nsw.gov.au/publications-and-resources/publications-search>, at p. 2.
- 60 ICAC, *Toolkit*, *supra* note 56.
- 61 OECD, *Guidelines*, *supra* note 14.

- 62 R. Arinditwe (2010). *The Work of the Ombudsman with the view to Improving the Principles of Social Justice in the way Government conducts its affairs and discuss the challenges in promoting Good Governance*. Retrieved November 3, 2011 from http://www.cafrad.org/Workshops/Tanger10-12_05_10/documents/OMBUDSMAN%20WORK%20AND%20CHALLENGES%20by%20Dr%20Arinditwe%20Raphael.pdf.
- 63 Procedural Fairness: refers to the process used to make a decision. Relational Fairness: refers to the treatment of the parties involved in a decision-making process or affected by a decision outcome. Substantive Fairness: refers to a decision outcome. To be substantively fair a decision must be based on relevant information and be correct factually and legally.
- 64 OECD, *Guidelines*, *supra* note 14, at p. 3.
- 65 Council on Foundations, Legal Services and Ethical Standards Group (June 2006). *Drafting a Conflict of Interest Policy: A Guide to the Key Provisions*. Retrieved from <http://www.cpf.org/files/Documents/Building%20Strong%20Ethical%20Foundations/DraftConfInterest.pdf>.
- 66 Council on Foundations, *Drafting a Conflict of Interest Policy*, *ibid*.
- 67 OECD, *Guidelines*, *supra* note 14, at p. 98.
- 68 ICAC, *Toolkit*, *supra* note 56, at p. 7.
- 69 *Ibid*.
- 70 *The Public Interest Disclosure Act*, *supra* note 17.
- 71 Gençkaya, *Academic Research Report*, *supra* note 37, at p. 12.
- 72 *Ibid.*, at p. 14.
- 73 OECD, *Guidelines*, *supra* note 14, at p. 7.
- 74 Saskatchewan Public Service Commission. *Annual Report 2010-2011*. Retrieved from <http://www.publications.gov.sk.ca/deplist.cfm?id=12&c=6270>, at p. 25.
- 75 Interview with staff, June 1, 2012.
- 76 Interview with staff, May 24, 2012.
- 77 Interview with staff, May 29, 2012.
- 78 Political activity is also not specifically mentioned in section 95 of the PS Regulations, *supra* note 6. It is, however, contemplated by section 33 of the PSA, *supra* note 5.
- 79 The PSA, *ibid*.
- 80 OECD (2010). *Post-Public Employment: Good Practices for Preventing Conflict of Interest*. OECD Publishing, at p. 11.
- 81 ICAC, *Toolkit*, *supra* note 56, at p. i.
- 82 *The Public Interest Disclosure Act*, *supra* note 17.
- 83 The Yukon Public Service Commission has an excellent set of guidelines to support its conflict of interest policy entitled: *When in Doubt, Find Out: A Companion Guide to Understanding the Conflict of Interest Policy*. It can be accessed at: http://www.psc.gov.yk.ca/pdf/gam_3_39_companion_guide_conflict_of_interest.pdf.
- 84 *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, as amended by S.S. 1992, c. 62., S.S. 1994, c. 27, S.S. 1997, c. T-22.2, S.S. 1999, C. H-0.021, S.S. 2001, c. 50, S.S. 2003, c. 29, S.S. 2004, c.A-26.1, c. T-18.1 and c. 5, S.S. 2005, c. L-11.2 and c. 25, S.S. 2006, c. 19, S.S. 2008, c. V-7.3, and S.S. 2009, c. 5 and c. 32.
- 85 *The Health Information Protection Act*, S.S. 1999, c. H-0.021, as amended by S.S. 2002, c. R-8.2, S.S. 2003, c. 25, S.S. 2004, c. A-26.1, S.S. 2004, c. 65, S.S. 2005, c. Y-1.1, S.S. 2006, c. C-1.1 and c. 19, S.S. 2008, c. V-7.3, and S.S. 2009, c. 32. 85 Province of Saskatchewan (2003).
- 86 Province of Saskatchewan (2003). *An Overarching Personal Information Privacy Framework for Executive Government*. Retrieved from <http://www.gov.sk.ca/news-archive/2003/9/11-648-attachment.pdf>.
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- 88 The PS Regulations, *supra* note 6.
- 89 Interview with staff, June 1, 2012.
- 90 ICAC, *Toolkit*, *supra* note 56, at p. 17.
- 91 PS 801, *supra* note 6, at p. 1.
- 92 Office of the Conflict of Interest Commissioner of Ontario. *2010-2011 Annual Report*, *supra* note 45, at p. 7.
- 93 Ombudsman Victoria (2008). *Conflict of Interest in the Public Sector*, *supra* note 2, at p. 5.
- 94 Ombudsman Victoria, *ibid.*, at p. 5.